

No. 15201

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United States  
Court of Appeals  
for the Ninth Circuit

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RALPH E. WILLIAMS, as Trustee in Bankruptcy of the Estate of George F. Elliff, an individual doing business as Pine Supply Co., bankrupt, and PEARL K. LANNIN,  
Appellants,

vs.

TWIN CITY COMPANY, TWIN CITY LUMBER CO., JOHN W. HUNTER, FRANKLIN SUPPLY CORPORATION, SOUTHWEST MANAGEMENT CORP., H. A. COLLINS and WILLIAM R. RAMSAY, Appellees.

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Transcript of Record

In Two Volumes  
VOLUME II.

(Pages 329 to 671, inclusive)

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Appeal from the United States District Court for the  
Northern District of California  
Southern Division

FILED

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(Testimony of George F. Elliff.)

Q. You didn't tell him? A. No.

Q. I show you a two-page handwritten letter on the stationery of Pine Supply Company, and without reference to the date because I know the date is not in your handwriting, will you tell me whether or not you wrote that letter? A. I did not.

Q. You did not write that letter?

A. I did not.

Q. Is that not your signature, "George Elliff"?

A. It is not.

Q. Do you know whose handwriting this is?

A. I do.

Q. Who? A. My wife.

Q. Did she write this letter at your direction?

A. I would have to read the letter.

Q. I wish you would, please. (Handing witness.)

A. (Witness examining.) Very good letter.

The Court: What's that?

Mr. Shapro: His comment was, "It is a very good letter."

May I have an answer to the question?

Read it to him, please.

(Question read by the reported:

"Q. Did she write this letter at your direction?") [281]

A. If I recall, I can't—it says, "December" there—I am trying to place when I wrote this letter. But it was after the note, I gather from the conversation, but I can't—I mean, there is no date. It says, "February——"

Q. I say, ignoring the date. All I asked you

(Testimony of George F. Elliff.)

is whether your wife wrote that letter at your instructions. We will get to the time element.

A. Yes. Yes, I would say yes.

Mr. Shapro: Your Honor, we offer in evidence the letter with the understanding that the date which appears on it in someone elses handwriting is not to be considered by your Honor until we establish by some other evidence the source and the circumstances of the date, because undated the letter is material, anyway.

The Court: Exhibit F.

(Thereupon handwritten letter addressed to "Dear John" and signed "George Elliff" on letterhead Pine Supply Company, received in evidence and marked Defendants' Exhibit F.)

Q. (By Mr. Shapro): Mr. Elliff, I show you a letter dated October 6, 1953, addressed to Twin City Company, and purporting to be signed by you. First of all, did you sign that?

A. Yes. It is my signature.

Q. That is your signature? A. It is. [282]

Q. Is that the letter of transmittal that you have referred to as accompanying the documents which you delivered to Mr. Hunter's home on the Sunday morning? A. It is.

Mr. Shapro: We offer the letter, your Honor, dated October 6, 1953, in evidence.

The Court: Exhibit G in evidence.

(Thereupon copy of letter dated October 6, 1953, to Twin City Company, signed George

(Testimony of George F. Elliff.)

Elliff, received in evidence and marked Defendants' Exhibit G.)

Q. (By Mr. Shapro): As to your knowledge, Mr. Elliff, was any request made of Twin City Lumber Company to extend the terms of payment of the \$28,000.00 note?

A. I don't remember. You mean by me?

Q. Yes. A. I don't remember.

Q. Do you recall Mrs. Lannin requesting an extension of time and your signing a letter to that effect? A. It is possible.

Q. It is true, is it not, that the Twin City Lumber Company agreed to extend the first installments on February 1st, 1954, to May 1st, 1954?

Mr. C. H. Jacobs: That calls for the witness' conclusions.

Mr. Shapro: I don't think it calls for his conclusion.

The Court: No. I think it is information, if he knows [283] about it.

A. I will say it is possible. It is possible.

Q. (By Mr. Shapro): In other words, you don't have any personal recollection of the circumstance of a request for an extension?

A. Vaguely I do. There were so many phone conversations.

Q. Tell me, Mr. Elliff, at the time that this \$28,000.00 note was given to Twin City Lumber Company—this was the early part of October, 1953—that's the amount that you owed them at that time, isn't it?

(Testimony of George F. Elliff.)

A. It was \$28,116.00, if I remember.

Q. But you paid them the 116.

A. We wrote a check—I believe Mr. Pasquinelli did.

Q. As a matter of fact, Mr. Elliff, the \$116.63 was paid by money order, was it not?

A. It wasn't paid by me. I don't recall ever writing a check. I think it came from Mr. Pasquinelli's office.

Q. But it was paid from your funds, \$116.63?

A. From the Trustee Account, I believe.

Q. Whatever the source—you say it was from the Trustee Account? Okay. A. Yes.

Q. The note represented the balance of what you owed, the \$28,000.00?

A. In round figures, yes.

Q. That was all for lumber, with the exception of the item [284] of \$21.00 of protest fees and \$127.34, representing interest on the warehouse financing?

A. There is a lot of hidden interest in there that doesn't show up, too.

Q. Just what do you mean by "hidden interest?"

A. Well, it's a long and involved tale. I was paying 14 per cent interest on the money I was getting from Mr. Hunter.

Q. Do you have any computation, any record that indicates how you arrived at that computation? A. Yes, I can break it down for you.

Q. You say you can break it down for me. Can you do it now?

(Testimony of George F. Elliff.)

A. If I had some invoices, I could.

Q. Well, we will give you some invoices. I will show you Plaintiff's Exhibit No. 4, which is a group of invoices (handing witness). A. Okay.

Mr. C. H. Jacobs: You also have another invoice, Mr. Shapro.

Mr. Shapro: I have some others. They will come. But for his purpose, I think he has enough.

A. It was agreed that when we started this—can you hear me, your Honor?

The Court: Not very well.

A. It was agreed when we started this warehousing that I would pay 3 per cent in and above any set cost on lumber. Say [285] it was \$90.00. I would pay \$93.00, roughly, or a hundred I would pay \$103.00. You are normally entitled to two per cent discount, which I was not entitled to.

Q. (By Mr. Shapro): You got the two per cent discount on the 30 per cent when you paid it, didn't you? A. Only.

Q. Only? A. Only.

Q. But you didn't pay the 70 per cent, did you?

A. No. No, that was credited to another account

Q. Go on.

A. Then I was charged 6 per cent interest for the money in the warehouse.

Q. On the 70 per cent?

A. In and above that, which would have been 9, 10, 11 per cent.



(Testimony of George F. Elliff.)

Q. No, I mean—let's not confuse the issue, Mr. Elliff. You know that the 6 per cent interest that was charged to you on the 70—on the warehouse account—was that 6 per cent per annum, not 6 per cent of the face?

A. Roughly, yes, per annum.

Q. Per annum? A. Yes.

Q. You also know that the two per cent discount you are talking about was over—off the face of the invoice, isn't [286] right?

A. Off the face of the invoice?

Q. Off the face of the invoice, 30 per cent of it, yes. A. Only on 30 per cent.

Q. That is all you paid at the time?

A. But I was paying double interest.

Q. We won't—all right, let's not—you and I—argue, the judge won't like it.

A. I don't see how it is important, anyway.

Q. But it well may be important, sir.

A. It might be.

Q. At the time that you gave this \$28,000.00 note, you owed on the warehouse account \$17,416.05, did you not—and I am calling your attention to Plaintiff's Exhibit No. 13. A. I don't know.

Q. Isn't that one of the items, Mr. Elliff, that comprised the \$28,116.63 that you just—

A. Mr. Shapiro, they told me repeatedly they would give me a full accounting, which they never gave me, even to this date, they never gave me. I took it on the face value that they were honest people and so did my attorney.

(Testimony of George F. Elliff.)

Q. Was there any reason to doubt that?

A. I had reason to doubt it.

Q. You have it now?

A. It doesn't matter now. [287]

The Court: What?

Mr. Shapro: He said it doesn't matter now.

A. It doesn't matter now, but I had reason to doubt it, yes.

Q. (By Mr. Shapro): Now, Mr. Elliff, I am going to show you—just for the purposes of refreshing your recollection only—

The Court: While you are doing that, Mr. Elliff, as I understand it, the arrival of the figure of \$28,000.00 on this note was made by taking approximately \$10,000.00 in bad checks and the balance due on the warehouse account to arrive at the figure of \$28,000.00 isn't that correct?

A. They were their figures, yes, sir.

The Court: Yes, and you accepted them—that's how you—

A. With the understanding they would send an auditor—

The Court: In order to arrive at the figure of \$28,000.00, that's how you got the \$28,000.00?

A. That is correct.

The Court: All right.

Mr. Shapro: May I have the answer? I am sorry, your Honor.

The Court: He says that was correct.

Mr. Shapro: That's all I wanted.

(Testimony of George F. Elliff.)

Then I don't have to pursue that phase of it, then.

Thank you, sir.

The Court: If you were not listening, the statement of the witness was that he was taking the figures of the warehouse [288] account from the——

Mr. Shapro: Twin City Lumber Company.

The Court: ——taking their figures.

Mr. Shapro: I understand.

Q. You made payments on that note afterwards, too, didn't you?

A. I directed payments on the note.

Q. They were paid from your funds?

A. They were paid from the Trustee's funds.

Q. And the source of the Trustee's funds was your sales, wasn't it, the collection of accounts receivable? A. That's correct.

Q. At the time that the \$28,000.00 note was issued by you to Twin City Lumber Company, all of the merchandise that they had previously held warehouse receipts on, which were in your field warehouse, were released by them within three or four days afterwards? A. That's correct.

Q. Right. No other security was given to them from your assets at that time or any time later, was there? A. No, sir.

Q. Now, Mr. Elliff, your testimony of this morning, you testified that you bought lumber from other concerns after October, 1953, is that right?

A. Correct.

Q. As a matter of fact, you bought over \$7,000.00



(Testimony of George F. Elliff.)

worth of [289] lumber from Harbor Plywood Corporation, did you not?      A. I did.

Q. And you bought that on March 22, 1954, did you not?      A. In and about that.

Q. You bought it on open account?

A. I did.

Q. And the materials were two per cent ten days—30 days net, is that right?      A. No.

Q. You say no?

A. Two per cent 30 days—60 days net.

Q. Are you certain, sir?

A. They adjusted the second—on the second invoice they adjusted it.

Q. The invoice that I am talking about—which, your Honor, is in the files of this court, in the Office of the Referee in Bankruptcy—is an invoice date March 22, 1954, for \$7,380.10, and on its face it says: "Terms 2 per cent 10 days—30 net."

Now, if you want me to bring the invoice here, I will bring it. Do you remember it?

A. It is possible I remember it.

Q. What other people or firms did you buy merchandise from in 1954 on open account?

A. Durable Plywood. [290]

Q. And to what extent, sir, in volume, dollar volume?      A. Oh, two or three thousand dollars.

Q. And you bought that—that was on open account?      A. Yes, sir.

Q. As a matter of fact, it was the non-payment of the Harbor Plywood invoice of \$7,300.00 that was

(Testimony of George F. Elliff.)

represented—the attachment that closed up your business in June, is that right?

A. I don't know who came first, whether it was he, Harbor, or Al Stockton.

The Court: You stated yesterday that Harbor Plywood was the first attachment.

A. I believe they were the first.

Q. (By Mr. Shapro): Now, after October, 1953, the Twin City Lumber Company exercised no control whatever over your warehouse, is that right? A. No.

Q. It is not right? A. No, they did not.

Q. Oh, they did not exercise it. As far as you know, after October, 1953, the merchandise that you delivered into warehouse, as you described this morning and which warehouse receipts were subsequently issued by Douglass-Guardian Warehouse, all went to Mrs. Lannin, not to Twin City, right?

A. Right. [291]

Q. After May 4, 1953, which is the date of the so-called warehouse agreement with Twin City Lumber Company, it is true, is it not, Mr. Elliff, that no lumber went in that warehouse, field warehouse, other than lumber sold to you by Twin City?

A. Lumber, yes.

Q. Up to—I should qualify—up to October, 1953? A. Lumber, yes, that is correct.

Q. This is correct? A. Yes.

The Court: Well, that question and answer doesn't make it clear to me.

Mr. Shapro: Then I will attempt to clear it up.

(Testimony of George F. Elliff.)

The Court: All right.

Q. (By Mr. Shapro): After the warehouse arrangement between—after the warehouse arrangement went into effect with Twin City, which was May, 1953, and up until the time the warehouse receipts were released in October, 1953, is it or is it not a fact that the only lumber that went into that field warehouse was lumber sold to you by Twin City Lumber?

A. The answer is still lumber, yes.

Q. Now, was there other merchandise in that period delivered into the field warehouse?

A. To my knowledge, not unless it came from Twin City, was it ever warehoused.

Q. Then my question and your answer, I would—— [292]

May I ask the reporter to read my previous question and his answer, because I think he is now changing his answer.

The Court: Well——

Mr. Shapro: I will ask it again.

Q. Mr. Elliff, between May of '53 and October of '53 was there any merchandise delivered into the warehouse, the field warehouse, other than merchandise sold to you by Twin City Lumber Company?

A. No.

Q. Now, go back, if you will, Mr. Elliff, to the meeting in your office the evening of that late September date in 1953 when you and Mr. Baum and Mr. Ramsey went over the books. You testified this morning, if I understood you correctly, that the

(Testimony of George F. Elliff.)

physical checking of the inventory, that is, the looking at the lumber in the warehouse, was done not only that time, but during that week, is that right?

A. I believe that's correct, sir.

Q. Now, at the time, however, namely, the evening of this meeting, was there any lumber, plywood, molding, or any other part of your stock in trade which was not located physically inside the field warehouse? A. I don't remember.

Q. You don't remember whether there was or there was not, or you don't remember whether there was any, which, sir?

A. I mean, I would have to kind of explain that. There [293] might have been lumber outside that hadn't been brought in for the day, which often happened in the summer time if it wasn't raining.

Q. Well, you testified, Mr. Elliff, the other day and Mr. Baum testified the other day, that the basis of the figures given Mr. Ramsey for your inventory that evening was the warehouse receipts which were in the possession of and the control of the bonded representative. A. That's correct.

Q. Right? A. Right.

Q. Now, was there any merchandise, any part of your stock in trade, that was in your premises, either the field warehouse or outside of it, then which was not on warehouse receipt?

A. There might have been some doors, yes, sir.

Q. And there might have been some plywood?

A. If there was, it was a very small amount, maybe five or six pieces.

(Testimony of George F. Elliff.)

Q. Well, assuming the accuracy of your estimate and of Mr. Baum's estimate as to the cost price to you of the merchandise which was on hand that night at \$25,000.00, that was the estimate you both made, assuming that, did that figure cover everything in the nature of merchandise that was in your premises either in or outside of the field warehouse?

A. I would say, Mr. Shapro, that it covered only the [294] purchases made from Twin City Lumber Company.

Q. Then in addition to that, you previously testified there was some merchandise around there—we will get to the location in a moment—that was not purchased from Twin City.

A. It could have been nothing but an insignificant amount, maybe two or three hundred dollars, a few doors and a few sheets of plywood.

Q. But whatever the few doors and a few sheets of plywood were, whatever they might have been as to the quantity or value, they were not included in your and Baum's estimate and the figure given to Mr. Ramsey of the \$25,000.00?

A. I would say no.

Q. They were not. Did you include in that figure any merchandise which was on your premises, had been delivered to your premises prior to that evening and which had not yet been moved into the field warehouse?      A. I don't remember.

Q. Would you say there was none—and I am excepting, of course, the few doors and plywood.



(Testimony of George F. Elliff.)

A. I would speculate there was none.

Q. You, in other words, say, your best recollection is there was none? A. Yes.

The Court: Just a moment. [295]

Q. (By Mr. Shapro): Is it your testimony——

The Court: Just a moment, Mr. Shapro. I didn't get the first part of that question.

(Question read by the reported.)

The Court: That doesn't answer the question. The question was: Did you include something? And the answer was: I would say there was none. And that is what I didn't understand.

Q. (By Mr. Shapro): Well, I am assuming—Perhaps I am wrong, too—I am assuming that when you say there was none, therefore there was nothing included in the \$25,000.00 figure for any such merchandise. A. That's correct.

Q. And is it your testimony at this time, Mr. Elliff, that the value of any of your merchandise which was not in the warehouse, and which therefore, from your testimony, just now, was not included in the \$25,000.00 estimate, would not exceed in value a few hundred dollars?

A. That's correct.

Q. Now, Mr. Elliff, in October, 1953, at the time of this meeting and the inspection of the books, whom did you owe money to other than the creditors of Pine Supply Company?

A. Personally, you mean?

Q. Yes.

A. Mrs. Lannin, the Bank of America, Charles

(Testimony of George F. Elliff.)

Lamb, maybe [296] some small bills around—that wouldn't amount to——

Q. How much did you owe at that time, in October, the end of September—I am not trying to confuse you——

A. That's all right.

Q. ——how much did you owe Mrs. Lannin?

A. Yes, sir.

Q. How much?

The Court: Mrs.?

Q. (By Mr. Shapro): Mrs.

A. That had grown to about \$18,000.00 about that time.

Q. By that time it had grown to about \$18,000.00? A. Yes.

Q. That was not recorded in the books of Pine Supply Company?

A. Only \$7,000.00, I believe, was ever recorded there because it was put into the business directly.

Q. And, as a matter of fact, the \$7,000.00 wasn't put in the books of Pine Supply Company until December 31, 1953, was it?

A. I would have no knowledge of that.

Q. Then to your best recollection, all of the indebtedness to Mrs. Lannin, other than possibly \$7,000.00, was not recorded in the books of Pine Supply? A. No.

Q. As of the same time, the end of September, 1953, how [297] much did you owe Charles Lannin?

A. Approximately \$13,000.00.

The Court: What?

(Testimony of George F. Elliff.)

A. \$13,000.00.

Q. (By Mr. Shapro): Was any of that recorded?

The Court: Who is Charles Lannin?

A. He was an associate of mine and Mr. Pasquinelli in a saw mill in Boonville, California.

The Court: Is he related to Mrs. Lannin?

A. By marriage, yes.

The Court: Is he the husband?

A. No, no, it's a brother-in-law.

Q. (By Mr. Shapro): What relation? I didn't get it. A. A brother-in-law.

Q. A brother-in-law?

A. Mrs. Lannin's husband and Charles Lannin were brothers.

Q. Oh, I see. Mrs. Lannin is a widow?

A. Yes.

Q. I see. None of your indebtedness to Mr. Charles Lannin was recorded in the books of Pine Supply, was it? A. No, sir.

Q. The indebtedness that you just described, to the Bank of America, how much was that at that same time? A. In September?

Q. Yes. At the time of this meeting at your office with [298] Ramsey.

A. It was either two or three thousand, Mr. Shapro.

Q. Was that recorded in the books of Pine Supply at that time? A. No.

Q. And this other miscellaneous, personal indebtedness, how much did that amount to?



(Testimony of George F. Elliff.)

A. Petty. I mean, store bills—a hundred, hundred and fifty dollars.

Q. Personal clothing, food bills, stuff like that. That was not recorded in the books?

A. I was indebted in cars, Bank of America, which——

Q. Is that included in the \$2,000.00, the bank there?

A. No, no. That was a note. That was a note.

Q. That was unsecured? A. Unsecured.

The Court: What was unsecured?

A. The note at the Bank of America.

The Court: That was two to three thousand dollars? A. Yes, sir.

The Court: All right.

Q. (By Mr. Shapro): Now, on which car did you owe the Bank of America money, in addition to the two to three thousand dollars?

A. It wasn't the Bank of America. It was the First National [299] Bank.

Q. First National of San Jose? A. Yes.

Q. On what car? A. On the Lincoln.

Q. On the Lincoln?

A. I presume it was either September, October, I purchased it, so it would have been a Mercury or a Lincoln that I owed the balance.

Q. Who was the money owed to on the station wagon, what bank?

A. I think the Ford people. No, that would be the Bank of America. But that would be in my wife's name.

(Testimony of George F. Elliff.)

Q. You didn't sign that paper. A. No.

Q. Now, none of the personal indebtedness that you have just described, with the possible exception of \$7,000.00 to Mrs. Lannin, was recorded in your books, the books that were shown to Mr. Ramsey that night, right? A. No.

Q. In what form, if any, was the existence of this personal indebtedness of yourself made known to Mr. Ramsey that night?

A. I don't know as I ever made it known to Mr. Ramsey. Probably considered it none of his business.

Q. Were the details—by that I mean the amounts of your personal indebtedness—discussed in your presence with Mr. [300] Hunter at the meeting in his San Francisco office in August of 1953?

A. To the best of my recollection, no, not in August.

Q. After October 8, 1953, which was the date of this trust agreement, did you see Mr. Hunter personally?

A. After October 8th? Yes. Yes, I saw him after that.

Q. Do you remember when and where?

A. I saw him on two occasions, in Los Angeles, and one occasion in San Jose in the spring of 1954.

Q. The spring of 1954? A. Yes, sir.

Q. Was Mr. Ramsey present at any one of those three interviews that you recall? A. No, sir.

Q. Do you recall anyone, other than you and Mr.

(Testimony of George F. Elliff.)

Hunter, being present at any one of those three interviews which took place after October 8, 1953?

A. On all three occasions, Mr. Ben Clements was with me.

Q. Mr. Ben Clements? A. Yes.

Q. Who is Mr. Ben Clements?

A. He is the owner of the San Jose Lumber Company.

Q. San Jose Lumber Company? A. Yes.

Q. No business relationship directly with you?

A. Not at that time.

Q. Not at that time.

Q. Are you working for him now?

A. No, sir, I am not.

Q. Now, assuming that there were \$25,000.00 at cost price of lumber in your warehouse at the end of September, 1953, was there any substantial change in that inventory between then and the date that the trust agreement and note were executed and the warehouse receipts release? A. None.

Q. As a matter of fact, the warehouse was closed then, wasn't it? A. That's right.

Q. That merchandise that you say was worth \$25,000.00 plus maybe a few hundred dollars for anything that was not covered by warehouse receipt, was afterwards—was all of it, after the warehouse receipts were released by Twin City, made available to you through the trust by warehouse receipt releases from Mrs. Lannin, is that right?

A. It was.

Q. And it was then sold in the ordinary course

(Testimony of George F. Elliff.)

of your business, except that which remained in the warehouse at the time of your bankruptcy?

A. That is correct.

Q. Now, in the ordinary course of your business, I think [302] you estimated that your gross markup averaged between 20 and 25 per cent, is that right?

A. Overall. I always tried to average about 20.

Q. Well, would you say that your average was less than 20 or was it as Mr. Baum testified?

A. It fluctuated.

Q. Between 20 and 25?

A. On some items we get 30, some items just 10.

Q. We are using the word "average."

A. Averaged 20 per cent. I have always maintained——

Q. Or better on gross—now, this is gross.

A. I don't think there is any better.

Q. You don't think it was any better?

A. No.

Q. Well, then on that basis the \$25,000 cost price inventory, on a 20 per cent markup would be worth \$30,000.00 in the ordinary course of business, gross? A. Gross.

Q. Gross. A. Right.

Q. Now, the receivables at the time of this late September meeting at your office, how much were they?

A. They were just about even with the inventory, as I recall.

Q. About the same amount? [303]

A. Yes, twenty-four something, I believe.

(Testimony of George F. Elliff.)

Q. In other words, between twenty-four and twenty-five thousand?      A. Correct.

Q. And the amounts owed by Pine Supply to trade creditors, other than Twin City Lumber Company, was about ten, eleven thousand at that time?

Mr. C. H. Jacobs: What?

Mr. Shapro: The September meeting, the late September meeting.

Mr. C. H. Jacobs: I see.

A. I wouldn't put it quite that high, I don't believe, Mr. Shapro.

Mr. Shapro: Q. You don't think it was quite that high?      A. No, I don't believe so.

The Court: What do you think it was, approximately?

A. Taking everything, I mean overall, including what was owed from the partnership, it probably wouldn't exceed eight, I don't think.

Mr. Shapro: Q. It wouldn't exceed eight. All of eight that you are speaking of, approximately \$8,000.00 was recorded in the books of Pine Supply, was it?

A. It should have been by that time, yes.

Q. Well, I am not trying to make an accountant out of you. In other words, it was either recorded in the books or there [304] were unpaid invoices that were there for that month——

A. That's correct.

Q. And that would be about \$8,000.00?

A. I would say.



(Testimony of George F. Elliff.)

The Court: You want to take a recess, Mr. Shapro?

Mr. Shapro: All right, your Honor.

(Short recess.)

Mr. Shapro: Q. Mr. Elliff, I show you a letter consisting of two pages on the letterhead of Twin City Lumber Company, dated February 26, 1954, and ask you if that bears your signature and that of your wife? A. Yes, it does.

Q. And will you turn to the second page and tell me whether or not it bears the signature of mother-in-law, Pearl K. Lannin?

A. Yes, it does.

Q. Now, will you read that letter, please, to refresh your recollection on the subject about which I interrogated you earlier this morning, before I ask you a question in connection with it.

A. (Witness examining) Yes, sir.

Q. Now, is your memory refreshed now to the effect that there was an extension asked for by you, consented to in writing by Mr. Lannin, and given by Twin City Lumber for the first installment, postponing payment from February 1, '54, to [305] May 1, '54 on the \$28,000.00 note?

A. Well, Mr. Pasquinelli made the request. I think it was granted through Mr. Pasquinelli.

Q. But the point is: there was such a request made? A. There was.

Q. On your behalf? A. On my behalf.

Q. And it was granted?

A. That's right, sir.

(Testimony of George F. Elliff.)

Mr. Shapro: We offer in evidence the letter of February 26, 1954.

The Court: Exhibit H.

(Thereupon copy of letter of Twin City Lumber Company to Elliff, February 26, 1954, received into evidence and marked Defendants' Exhibit H.)

Mr. Shapro: Q. I show you, Mr. Elliff, what purports to be a financial statement of your dated April 7, 1953, and ask you if it bears your signature.

A. It does.

Q. That statement was given or transmitted by you to Twin City Lumber Company, was it not?

A. I believe it was, yes.

Q. And I call your attention to the fact that among the assets listed by you is a half interest in Pine Supply Company at 6500; that is the same partnership, of you and Mr. Hodes, that we talked about heretofore?

A. Yes. [306]

Q. The answer was what? A. Yes.

Mr. Shapro: We will offer, if your Honor please, a financial statement of George Elliff dated April 7, 1953, in evidence.

The Court: Exhibit I.

(Thereupon the financial statement of George Elliff dated April 7, 1953, was received into evidence and marked Defendants' Exhibit I.)

Mr. Shapro: Q. Mr. Elliff, who asked Mrs. Lannin to endorse and guarantee the payment of this \$28,000.00 note to Twin City?

A. I believe I did.

(Testimony of George F. Elliff.)

Q. Prior to the date that the note was issued, to your knowledge, did any representative of Twin City Lumber Company meet Mrs. Lannin?

The Court: Prior to what?

Mr. Shapro: Prior to the date of the note.

A. I believe Mr. Ramsey met her, If I am not mistaken.

Q. Was any request made of Mrs. Lannin to sign this note or guarantee this note by anybody, to your knowledge, on behalf of or by Twin City Lumber Company?

A. Not to my knowledge.

Q. As a matter of fact, Mr. Elliff, you know, don't you, that neither Mr. Ramsey nor Mr. Hunter nor Mr. Collins ever [307 met Mrs. Lannin until late in 1954? By "late," I mean June or July.

Mr. C. H. Jacobs: To which we object, of course, your Honor, as calling for the opinion and conclusion of the witness. He couldn't possibly have known that.

Mr. Shapro: He could, if he were there. I said as far as he knows.

Mr. C. H. Jacobs: Well, I didn't understand you to say that.

Mr. Shapro: I think my question embraced that.

Mr. C. H. Jacobs: I thought counsel said, "As a matter of fact, you know, do you know, that they did not?"

The Court: If the witness understands the question, he may answer.

A. I know that some time Mr. Hunter went to



(Testimony of George F. Elliff.)

Mrs. Lannin's house—I don't know when it was——

Mr. Shapro: Q. That was to demand payment of a part of the note, wasn't it?

A. I don't know.

Q. You don't know. Mrs. Lannin's guarantee on this note was done at your request and as an accommodation to you, was it not?

A. It was done on the request of Mr. Hunter.

Q. Let me get this straight. It is your testimony that——

A. To me. To me. [308]

Q. ——Mr. Hunter asked you to ask Mrs. Lannin to endorse this note?

A. Absolute.

Q. And, as I understand it, Mr. Hunter had not at that time ever met Mrs. Lannin, right?

A. No.

Q. Now, you heard Mr. Baum's testimony yesterday, didn't you?

A. Yes. (Shaking head.)

Q. You are shaking your head?

A. Yes.

Q. You heard his testimony that in the meeting with Mr. Hunter in San Francisco in the latter part of August, 1953, he suggested a deal, a proposal, whereby the warehouse was to be released so you would be more fluid with it and the obligation to Twin City would be funded over a period of three years.

A. That's correct.

Q. Wasn't that the first effort on your behalf made by anybody to procure the release of the warehouse to you?

A. I believe that is correct.

Q. And isn't it a fact that on the weekend, the Friday or the Saturday preceding the meeting at

(Testimony of George F. Elliff.)

Mr. O'Connor's office when the not was prepared, that the suggestion that Mrs. Lannin might sign or could sign or warranty your note for \$28,000.00 was made by you to Mr. Ramsey by telephone?

A. I recall calling Mr. Ramsey but the suggestion had come earlier than that. It had come prior.

Q. From whom?

A. In conversation with Mr. Hunter.

Q. And when was that, and where did it take place?

A. It was about the time of this \$7,000.00 check was being discussed so much.

Q. That would be in September?

A. Early September, I would say, yes.

Q. Now, Mr. Elliff, I am going to repeat the process that the Court did earlier, and call your attention to the fact that the check is dated September 18th, it was protested on September 27. You *still the* conversations took place in early September about the check having bounced?

A. No, I can't say that. The figures don't lie.

Q. All right, then, Mr. Elliff—

A. Let me change that by saying it was prior to the week that Mr. Ramsey spent with me in San Jose.

Q. All right. In other words, in the telephone conversation one or more of the telephone conversations that you had with Mr. Hunter concerning this \$7500.00 bad check, a suggestion was made that Mrs. Lannin might sign your note?

(Testimony of George F. Elliff.)

A. It was made that someone secure—which he meant, like my mother-in-law, Mrs. Lannin——

Q. Did he use the words “like your mother-in-law”? [310]

A. Yes. Yes.

Q. And this is Mr. Hunter’s suggestion?

A. Yes.

Q. And it is not a fact, then, Mr. Elliff, that the first time the guarantee of your note—of any note by you to Twin City Lumber Company by Mrs. Lannin did not come from you?

A. I got a little mixed up there.

Q. I will repeat it. I twisted it.

Was the first suggestion that Mrs. Lannin would sign a note for you to Twin City Lumber Company made by you?      A. No.

Q. Who made the first suggestion that a note of yours be guaranteed by Mrs. Lannin?

A. By Mrs. Lannin, or someone equally secure, came from Mr. Hunter.

Q. By Mrs. Lannin or someone equally secure?

A. Yes.

Q. Then when you testified a few minutes ago that you asked Mrs. Lannin to sign this note at Mr. Hunter’s request, it was pursuant to the request you have just outlined, namely Mrs. Lannin or somebody equally secure, is that right?

A. The seed was planted by Mr. Hunter.

Q. But you don’t want this Court to understand that Mr. Hunter told you to go ask Mrs. Lannin?      A. Oh, no. [311]

(Testimony of George F. Elliff.)

Q. Mrs. Lannin to sign this note?

A. Oh, no, I did that on my own.

Q. How long, Mr. Elliff, did this meeting with Mr. Ramsey at which you and Mr. Baum attended at the Bermuda Palms in San Rafael last?

A. Oh it was late in the evening and I would say that roughly an hour, perhaps.

Q. Was anything done at this meeting but discussion—I mean by that, did you have a meal or anything?

A. A drink, maybe.

Q. You didn't eat dinner?

A. No, I don't think so.

Q. How long did the meeting at San Jose on the latter part of September, 1953, take?

The Court: Well, now, the evidence is he was there every day for a week.

Mr. Shapro. But I am referring—no, your Honor. I am sorry. That represented the taking of the inventory, the checking of the inventory I am referring to the meeting, one meeting on the evening when the books were shown to Mr. Ramsey.

The Court: That isn't my recollection of the testimony. That went on for a period of a week, he was there.

A. That's right.

Mr. Shapro: In other words—I am wrong [312] now; I have been corrected by the Court and you confirm it, that the showing of the books to Mr. Ramsey occupied more than one session?

A. He made the request to get things together, he wanted to see the inventory, he wanted to know the condition of the business, how it stood finan-

(Testimony of George F. Elliff.)

cially, how the accounts receivable were, whether the inventory was in place, in warehouse, et cetera, and the reason it is so vivid in my mind is that Mr. Ramsey was so eager to go one vacation that particular week and he couldn't get on vacation for attending to this business for Mr. Hunter.

Q. And how many times then did he visit you, visit your premises during that week and look over books?

A. I believe all but one day throughout that whole week.

Q. And Mr. Baum was there every day then, too? A. Yes, Mr. Baum was there.

Q. And Mr. Ramsey still hadn't gone on his vacation the night you went over to San Rafael, had he? A. No, not yet.

Q. During the period after October 8th of 1953 when you undertook to take merchandise or have merchandise released to you from the field warehouse, with whom did you take that up?

A. After October 8th?

Q. Yes, sir. [313]

A. Well, it was plainly stated in the trustee agreement.

Q. I am not asking you what the agreement said, sir. I am asking you what you did.

A. To release inventory from the warehouse?

Q. When you wanted to fill an order and get merchandise out of the warehouse, what did you do?

A. Loaded it on the truck and took it out. It was that simple.



(Testimony of George F. Elliff.)

Q. It was that simple?

A. It was that simple.

Q. There was no bonded representative of the warehouse company, there at that time?

A. Oh, yes, at all times.

Q. Again, I repeat, what did you do to get merchandise out of the warehouse?

A. The same as I had done when Mr. Hunter had receipts. I loaded it on the truck and took it out.

Q. And there were no documents signed?

A. Yes, there was always an invoice.

Q. That is what I am trying to find out.

A. The same procedure that we follow in any—

Q. But the Court isn't interested in what we do in any business. The Court is interested in what you did in this business.

A. Do you want me to make an example? [314]

Q. No. You tell the Court, if you please, in response to my question——

The Court: Well, Mr. Shapro, you are trying to show that he had nothing to do with your company.

Mr. Shapro: Exactly.

The Court: Isn't that what you are trying to show?

Mr. Shapro: Exactly.

The Court: Why don't you ask directly about that? I can understand what you are getting at.

Mr. Shapro: I am sure your Honor can. I am not sure the witness can.

(Testimony of George F. Elliff.)

Q. Mr. Elliff, after October 8, 1953, you never consulted Twin City Lumber Company in connection with any dealings with the warehouse?

A. I did not.

Q. Did you consult Mrs. Lannin directly?

A. From time to time, yes.

Q. Didn't you testify, Mr. Elliff, the other day, on direct examination, that—and I am going to attempt to use your very words—that you possibly suggested the arrangement that resulted in the \$28,000.00 note on the trust agreement?

A. May I have that question again?

(Question read by the reporter.)

Mr. C. H. Jacobs: Wouldn't the record be the best evidence? [315]

Mr. Shapro: This is cross examination, your Honor. I want to test his recollection, even since yesterday.

The Court: I will permit the answer.

A. Yes, I did.

Mr. Shapro: Q. Isn't it a fact, Mr. Elliff, that between May of 1953, when the warehouse arrangement with Twin City was set up, and at least up until October 8, 1953, that on several occasions you told Mr. Ramsey and Mr. Collins, or either of them, at the office of Twin City Lumber Company in San Francisco, that Pine Supply would always pay its bills and would come out on top?

A. You left out part of the statement.

Q. Please answer that question. If it wasn't said that way, then say so, I mean, whatever the

(Testimony of George F. Elliff.)

fact is. A. It was not said that way.

The Court: You may answer and then explain, if you desire.

A. It was a continuation to that statement, if we were given a free hand to operate the business the way it should be operated.

Mr. Shapro: Q. In other words—and what did you mean by “given a free hand”? Warehouse?

A. No—no, sir.

Q. What did you mean?

A. I meant that this continual being chopped off when there [316] was an urgent order to be filled and there was material waiting to be shipped, because of some little, petty fault that had come up, or delinquent payment by a few days, and a customer got disgusted and had left me with some inventory which I couldn't use.

Q. In other words, Mr. Elliff, you felt and stated to them at these conferences that you needed some relief in the form of having merchandise released from the warehouse, even though you were delinquent on the warehouse payments, on the open account items, is that right? A. That is correct.

Q. And do I understand you to say that those delinquencies were only a matter of a few days?

A. In some cases, yes.

Q. As a matter of fact, Mr. Elliff, your account, as the record shows and as you testified on direct examination, with Twin City Lumber Company, was always delinquent?

A. It was understood that it would be.



(Testimony of George F. Elliff.)

Q. Will you answer my question? Was it or was it not?

A. I don't know, without looking at the record.

Q. The condition that you placed upon your ability, as I understand your testimony, to continue in business and pay the bills, was to have Twin City Lumber Company give you more leeway with your delinquencies?

A. They were the ones that suggested the business in the [317] first place and that was the agreement in the beginning.

Mr. Shapro: May I have an answer to the question, your Honor?

A. That is my answer to the question.

The Court: Read the question, please, and you answer it and explain it afterwards, if you can.

(Pending question read by the reporter.)

Q. (By Mr. Shapro): Do you understand the question?

A. Yes, I do. I am just trying to give you what I consider the right answer.

Not in the sense of delinquencies, no. More leeway, yes.

Q. I asked you before and I ask you again: What did you mean by "more leeway?"

A. A greater inventory, a more diversified inventory. The original proposal that they had made covered this and never was fulfilled.

Q. When you say the original agreement, I assume you refer to an oral understanding?

(Testimony of George F. Elliff.)

A. No. This understanding (indicating document.)

Q. Will you point out—you are referring now to——

A. It's very simple.

Q. You are referring to Plaintiff's Exhibit No. 1. Will you point out to me the part of that agreement, the letter dated May 4, 1953, to which you referred in your last answer?

A. Mr. Shapro, it is the other letter that we had here. [318]

Mr. C. H. Jacobs: To save time——

The Court: Exhibit——

Mr. C. H. Jacobs: I make this objection, this is irrelevant, incompetent, immaterial. I may be in error, but as far as I can see, it has nothing to do with the issues of this case.

The Court: This is cross examination. Objection overruled.

Q. (By Mr. Shapro): I am now handing—perhaps this is the one, Mr. Elliff—Exhibit No. 2 (handing witness).

A. No. We just had it here. This isn't it, either. It is the one prior to that.

Q. Well, the one prior is Exhibit 1, which is May 4. That is the first agreement.

A. The last one we had before then, sir.

Q. It is one of these letters in Exhibit 3?

A. No, no. It is one of these. Here it is.

Mr. Shapro: The witness is pointing, if your Honor please, to paragraph number one on the first

(Testimony of George F. Elliff.)

page of the letter marked Plaintiff's Exhibit No. 1, which reads——

The Witness: Which reads: That all lumber, moldings, plywood and door jambs purchased from us at 70—those are the items that I brought up.

Mr. Shapro: The witness only read part of the paragraph to which he points. It reads as follows:

“We will advance you 70 per cent of our invoice price on all lumber, moldings, plywood and door jambs purchased from us. This 70 per cent will be advanced against Douglass Guardian Warehouse receipts.”

Q. Now, is it your testimony, Mr. Elliff, that after May 4, 1953, at any time the Twin City Lumber Company failed to give you 70 per cent credit on a warehouse receipt basis for merchandise, plywood, door jambs or moldings sold to you by them?

A. Not the failure——

Q. Did you say “no”?                      A. I said “No.”

Q. All right.

A. The failure in that particular paragraph is that they did not provide me with the door jambs and the moldings and the plywood that they had agreed.

Q. You said that before. I want you to tell me where and how and in what manner they agreed to furnish you any amount of door jambs or moldings, that is what I am asking you.

A. They didn't supply me with any.

Q. Did you order any?                      A. I certainly did.

Q. You certainly did?                      A. Yes. [320]

(Testimony of George F. Elliff.)

Q. In writing? A. Yes.

Q. Were they of their manufacture?

A. They were not very strong in the manufacture end of the lumber products business, anyway.

Q. And you knew that when you first made the warehouse arrangement with them, didn't you?

A. I knew that, and also was told and agreed—the subject—we drew this up, that door jambs and plywood would be made available to the warehouse.

Q. And that agreement preceded the date—that you are talking about—was an oral agreement that preceded the letter of May 4, 1953, is that right?

A. That's correct.

Q. But it is true, is it not, that all of the lumber, moldings, plywood or door jambs which Twin City Lumber Company sold to you after May 4, 1953, was put on the 70 per cent warehouse basis?

A. Only lumber and moldings—is the only thing they ever sold me.

Q. They never sold any plywood, never sold any door jambs, right? A. Right.

Q. You bought plywood elsewhere?

A. Not until after we had signed the trustee agreement. [321]

Q. Didn't you testify a few moments ago that you had some plywood on hand in the end of September?

A. Not in quantity. We bought some, various sheets of plywood, yes, sir.

Q. I merely asked you if you bought plywood elsewhere. The answer is yes?

(Testimony of George F. Elliff.)

A. I am thinking in carloads. No, we never bought carload.

Q. Did you buy door jambs elsewhere?

A. In October, I believe we did.

Q. Not before?           A. I don't believe so.

Mr. Shapro: I think that is all.

Further Redirect Examination

Q. (By Mr. R. N. Jacobs): Mr. Elliff, I show you Plaintiff's Exhibit F, letter that has been referred to as having been written by your wife at your direction.

The Court: That is Defendants' Exhibit F.

Mr. R. N. Jacobs: Defendants' Exhibit F. Excuse me. Defendants' Exhibit F.

Q. And I call your attention to the second page, the clause that says, " \* \* \* because in spite of everything you said \* \* \*"

Can you tell me what that refers to?

A. It referred to a conversation that Mr. Hunter had upset me a great deal over, and by using such violent and vile language over the phone. [322]

Q. When was that conversation held?

A. I can't tell you because there is no date on this letter, unfortunately.

Q. Approximately what time?

A. Well, we speak of "December."

The Court: We speak of what? I don't hear you.

A. We speak of "December"—I think "December" in here, when the check—the 18th of December—collections from the—. So it must have been around the—December the 18th.



(Testimony of George F. Elliff.)

Q. (By Mr. R. N. Jacobs): What year?

A. 1953.

Q. That was after the date of the October transaction?

A. Yes, sir.

Q. What was that conversation, can you tell me?

A. Mr. Hunter had called me in regards to the fact that we hadn't paid these last invoices of lumber or molding that they had shipped in November.

Q. What had he said in that regard?

A. Well, he became very violent about everything and he made some threats and said that he was never used to doing business in this way, that he had never seen me lie before, and I denied I lied—and it was very uncomplimentary—that he accused me of such—because I had no intention of lying; that if I had the money, I would have paid him long before. And that's about the gist of it.

Q. When this warehouse was set up in May of 1953, that is when the warehouse receipts were issued to Twin City Lumber Company, what merchandise did those warehouse receipts cover?

A. They covered all merchandise that Mr. Hodes and I had in our possession at that time.

Q. Can you tell me what the setup—the physical setup—of the warehouse was?

A. The enclosure.

Q. Yes.

A. It was a tin building which consisted of 6400 square feet.

Q. Were there any other buildings?

A. There was a building to the annex of the

(Testimony of George F. Elliff.)

building, a shed-roof type building, open face, and under the warehouse arrangement I think we had 30 to 60 feet on three sides of the building for storage, in addition to that, and for handling and sorting lumber.

Q. Was the total amount of the storage space, including the outside building, under the warehouse arrangement? A. Yes.

Q. I think you testified as to any merchandise that might have been on hand at the time Mr. Ramsey was in San Jose in the latter part of September. Could you clarify that for me? Could there have been any merchandise in the warehouse which was not examinable by Mr. Ramsey? [324]

A. I personally showed Mr. Ramsey all the stock in trade in the warehouse, in the warehouse during that week.

Q. You further testified that Mr. Ramsey looked at the warehouse receipts, is that correct?

The Court: Warehouse what?

Mr. R. N. Jacobs: Warehouse receipts.

Q. Is that correct?

A. If he didn't look at them, Mr. Jacobs, he certainly had access to them, both from ours and from their own records, which they had copies of themselves.

Q. Was there any merchandise in the warehouse that was not under warehouse receipt as of that time? I am referring to the latter part of September when Mr. Ramsey was in——

A. If there was any, it was awfully minute. It

(Testimony of George F. Elliff.)

might be, as I said there to Mr. Shapro, two or three hundred dollars in various little doors or plywood that was—but that would be the only thing.

Q. Was there any stock in trade located outside of the warehouse, in front or in back, which would not have been within the warehouse setup?

A. There was some low-grade pine that we had had from the first shipment, as I recall, from Ukiah Pine Company, which was shipped by Twin City, in the back under the shed at that time, yes.

Q. Was that within the warehouse as it had been set up? [325]

A. It was still covered by warehouse receipts.

Q. Was there any stock in trade located in front of the warehouse that may have just come in on a shipment?

A. I don't believe so, because our agreement called for all purchases through Twin City and they had cut off shipments in August, if I recall.

Q. Will you clarify what you just said about "our agreement with Twin City" as calling for purchasing solely from Twin City—I believe that is the essence of the statement?

A. That is correct.

Q. Would you clarify that for the Court?

A. In entering into the agreement in May with Mr. Hunter, Mr. Hodes and I had agreed that any purchases made by Pine Supply Company would be through Twin City Lumber Company.

(Testimony of George F. Elliff.)

Q. Was that part of the agreement carried out by you?

A. Outside of LCL shipment and—I mean LCL, less than carload—and maybe a few doors or a piece of plywood here and there.

Q. Did that amount to any substantial purchases?

A. Not even one per cent of the entire gross business.

Q. Was there any of that merchandise purchased by those means on hand as of September, the latter part of September?

A. To the best of my recollection there were a few pieces of plywood, maybe five or six, and a few doors, but it wouldn't exceed two or three hundred dollars at the most. [326]

Q. You further stated that you did not receive any deliveries after August, of merchandise, is that correct?

A. Not from Twin City Company or anyone else, as I recall.

Q. Why was that?

A. I had given my word to Mr. Hunter in the elevator at their office that—he asked me to promise that I would not make any further purchases from anyone else because they were holding up all further shipments until this thing was settled.

Q. Could you explain what you mean by Mr. Hunter stated to you at the elevator outside of their office—when was that?

(Testimony of George F. Elliff.)

A. We had left Mr. Hunter's office and I think——

Q. What occasion was that?

A. This was the occasions that Mr. Baum and I had gone up there and proposed a long-time pay-off on a note proposition with Mr. Hunter.

Q. Was that some time in August?

A. Some time in August.

Q. Can you place it where it was in August?

A. What day?

Q. Yes.           A. No, I couldn't, Mr. Jacobs.

Q. You had a conversation with Mr. Hunter in Twin City offices in San Francisco? [327]

A. That is correct.

Q. And was it after that conversation had ceased that you left the office, is that correct?

A. We started to leave the building and I think it came as an afterthought to Mr. Hunter, and as we were stepping into the elevator he came out the door and asked me to step out and he talked to me and he asked me in his own words if I would promise not to buy merchandise from anyone else until this thing was settled, which I did.

Q. You stated that was part of your agreement prior to this time. Was he aware of the fact that you had purchased any merchandise from anyone else?

A. Perhaps not, Mr. Hunter. But I had made it known to Mr. Collins and Mr. Ramsey upon occasions.

Q. How had you done that?



(Testimony of George F. Elliff.)

A. In person. We had ordered doors and we were picking them up and we had them sold.

(Thereupon an adjournment was taken until the hour of 2:00 o'clock p.m. of this day.)

Wednesday, November 23, 1955

2:00 P.M.

Mr. Shapro: If your Honor please, for the record, in consideration of a stipulation with counsel for the opposing parties, that the records of Mr. Elliff, to which reference was made by the witness Baum yesterday as having been exhibited to Mr. Ramsey, either at a meeting or at the end of a series of meetings in a week in the latter part of September, 1953, were of considerable bulk, we on behalf of the defendants, are willing to withdraw our request for the production by the witness, by me, and by the plaintiff, of the records to which he referred in testimony the other day.

Mr. R. N. Jacobs: We will stipulate for the trustee plaintiff that the records that were referred to by Mr. Baum—I think this will cover it, counsel—the records that were referred to by Mr. Baum in his testimony were extremely bulky and voluminous.

Mr. Shapro: Correct.

Mr. R. N. Jacobs: We will so stipulate for the defendant and cross-complainant Pearl K. Lannin.

GEORGE F. ELLIFF

resumed, previously sworn.

Further Redirect Examination—(Continued)

(Testimony of George F. Elliff.)

Q. (By Mr. R. N. Jacobs): Mr. Elliff, I believe we were discussing when it came time for the noon recess the fact [329] Mr. Hunter had said to you at the elevator outside of his office in San Francisco, that: "George, I want you to promise not to get any merchandise from anyone but me." Is that substantially correct?

Mr. Shapro: Until all of this was straightened out.

Q. (By Mr. R. N. Jacobs): Did you add, "Until all of this was straightened out"?

A. That is correct.

Q. You also testified that at the May meeting with Mr. Hunter you had agreed with Mr. Hunter and he had agreed with you that you would accept no other merchandise but that merchandise shipped to you by the Twin City Lumber Company, is that correct?

A. That is correct.

Q. Did you accept any other merchandise except the little pieces that you mentioned, plywood and door jambs that did not amount to more than a few hundred dollars?

A. Not up until that time, no.

Q. Was there any conversation that took place in Mr. Hunter's office that you can recollect that would have caused Mr. Hunter to come out and say that to you?

Mr. Shapro: If your Honor please, I am going to object to that as argumentative and calling for the conclusion of the witness.

The Court: I think it does, counsel. [330]

(Testimony of George F. Elliff.)

Mr. R. N. Jacobs: All right, I will rephrase my question, your Honor.

Q. Did you have any conversation in Mr. Hunter's office regarding purchasing merchandise from anyone else?

A. I believe we did, sir, yes.

Q. Can you tell us what the substance of that conversation?

Mr. Shapro: Time, place and parties present, please.

The Court: It was in the office in San Francisco in the same meeting you are talking about?

Mr. R. N. Jacobs: This is continuing that question.

Mr. Shapro: The May meeting?

The Witness: August.

Mr. R. N. Jacobs: The August meeting in San Francisco.

A. My chief complaint as to why the business had not flourished as we had anticipated was the lack of a steady source of supply of the materials that I had requested, of the materials that we had agreed on in May, and it was the general complaint on my part that I was very unsatisfied with the reaction of the Twin City Lumber Company as a whole, and I think—I am sure I made the statement at that time that I was so dissatisfied, if I had the means to pull out of this deal, I would, for the sake of the business and the satisfaction that I could prove to them that it could make more money than it had been capable of doing, due to

(Testimony of George F. Elliff.)

the fact that we were so strangled by their restrictions and always being cut off, [331] which probably brought about this statement by Mr. Hunter when he came up and said, "George, I want you to promise me not to buy anything from anybody else."

Q. Did you buy anything from anyone else after that conversation up to the time of the October transaction? A. No, sir, I did not.

Q. Mr. Elliff, I am going to ask you to go back a long period of time, and I understand your recollection will probably be rather vague, but if you can, tell us in as close as possible words, what was said at the transaction that I am going to mention. The Court will appreciate it.

Did you have any conversations with anyone in connection with Twin City Lumber Company or Twin City Company regarding your financial affairs?

Mr. Shapro: What was that?

Q. (By Mr. R. N. Jacobs): Did you have any conversations in regard to your financial affairs with anyone who was connected with the Twin City Lumber Company or the Twin City Company?

Mr. Shapro: If your Honor please, I object to that question as being entirely too general.

The Court: He can answer yes or no to that.

The Witness: I will have to answer yes.

Q. (By Mr. R. N. Jacobs): Did you have a conversation some time in 1952 with a man by the name of Collins? [332] A. I did.

(Testimony of George F. Elliff.)

Q. Was that the same Collins you have mentioned previously in your testimony?

A. Mr. Howard A. Collins, yes.

Q. When did that conversation take place?

A. That I can remember very well. It was Halloween Day, 1952, October 31st, in other words.

Q. Where did that conversation take place and who was present?

A. He and I, and it took place between San Mateo, California, and Madera, and from Madera back to San Mateo.

Q. Were you traveling in an automobile?

A. Yes.

Q. Can you tell us substantially that part of the conversation that you had on that occasion with Mr. Collins relating to your financial affairs at that time?

A. We discussed pretty openly my financial affairs as Hac, as I referred to him, I considered was a good friend of mine, and he had some marital difficulties about that time and he openly discussed those, and I openly discussed my affairs, and the indebtedness I had with Coast Range Lumber Company, which he was quite aware of, because he had been the instigator, the connection between John Hunter and myself in the beginning, and I told him it had broke me, which he was quite aware of, anyway, and I was quite in debt and was [333] having a lot of financial trouble otherwise.

Q. Did you tell him the amount of indebtedness of Coast Range Lumber Company at that time?



(Testimony of George F. Elliff.)

A. I am quite sure I did, yes, sir.

Q. What was that amount?

A. It was in the neighborhood of \$70,000.00.

The Court: How much?

A. \$70,000.00.

Q. Do I understand you then told him you were indebted to Coast Range for \$70,000.00?

A. Coast Range was indebted for \$70,000.00, of which I was only responsible for one-sixth of that amount.

Q. (By Mr. R. N. Jacobs): Did you tell him at that time that you were responsible for one-sixth of that indebtedness. A. I think so.

Q. Did you tell him about any other indebtedness that you had at that time?

A. Yes, I was very much concerned at that time about this note that I owed at the Bank of America because they were putting a bit of pressure on me, which was a personal responsibility to me and to my mother-in-law, Mrs. Lannin.

Q. What was the amount of that note?

A. \$5,000.00 at that time.

Q. Did you tell him the amount of that note?

A. I think so, yes. [334]

Q. Did you tell him what connection your mother-in-law had with that note? A. Yes.

Q. What was that connection?

A. She had co-signed it.

Q. Any other indebtedness that you discussed with Mr. Collins at that time?

A. I remember I was having trouble with the

(Testimony of George F. Elliff.)

Veterans Administration over this house. I remember telling him about that. I was about to lose the house I was living in.

Q. What did you tell him in that regard?

A. I told him I was delinquent in payments and they were about to foreclose on it.

Q. Did you have any discussion with Mr. Col-  
lions at that time regarding your assets, what you  
owned? A. Yes, I did, yes.

Q. Did you tell him what you owned?

A. I told him I was trying my best to sell these  
lots which I had on Mount Hamilton Road, of  
which I had three acres at that time.

Q. Did you tell him essentially what those lots  
were composed of?

A. I don't know whether I did or not.

Q. Did you discuss the value of the lots with  
him at all?

A. I do recall, I think, telling him that it had  
increased [335] a great deal since I bought them,  
because I bought them early in 1947, and real es-  
tate had continued to climb in value up there.

Q. Did you tell him what that increase amounted  
to or what the value of them was after the in-  
crease?

A. I could have. I don't know. I could have, yes.

Q. What was the first contact you had with Mr.  
Hunter? A. My first contact?

Q. Yes.

A. Was in the spring of 1951 at the Fairmont  
Hotel here in San Francisco.

(Testimony of George F. Elliff.)

Q. Was that in regard to the Coast Range Lumber Company? A. It was, yes.

Q. Going back one moment to Mr. Collins, did you and Mr. Collins discuss any financial dealings between Twin City Lumber Company and any business which you were connected with at the time of this conversation that you just related?

The Court: What conversation?

Mr. R. N. Jacobs: The conversation——

The Court: 1952?

Mr. R. N. Jacobs: Yes.

A. I told him that we, meaning Mr. Hodes and I, were going to form a partnership the following day, which would have been November 1st, in Abbott-Lane Pine Supply. He had been aware of it, because I had had conversations over the phone [336] with him, and that was the reason we made this trip this particular day was to buy some pine. I told him what we had in mind, yes.

Q. Subsequent to that, did any negotiations take place between the partnership and Twin City Lumber Company? A. It did, yes.

Q. As a matter of fact, Mr. Elliff, you and Mr. Collins had a meeting with Mr. Hodes upon your return from this trip in 1952, is that not correct?

A. We did, at Mr. Hodes' home in San Mateo.

Q. What was the conversation generally about at that meeting?

A. Mr. Collins—he was very interested in what we were going to do down there in the way of selling pine lumber.

(Testimony of George F. Elliff.)

The Court: Mr. Collins was what?

The Witness: Was interested in what we were going to do in the way of selling pine lumber in LCL shipments, less than carload. He felt there was a definite need. He expressed that opinion. He was interested in selling us lumber and we discussed things on a long-time program.

Q. Was he interested at this meeting in Mr. Hodes' financial condition?

A. Yes, I would say he was.

Q. How was this interest expressed in conversation?

A. He asked about his financial position. [337]

Q. What was he told by Mr. Hodes?

A. Mr. Hodes, I remember telling him about the age of Abbot Lane Company, Inc., which he owned in Portland and brought to California, a sole ownership, and I told him the rating it carried in Dun and Bradstreet, which was substantial, and that was about the important factors of it, the highlights.

Q. Was there any discussion at this meeting at Mr. Hodes' house regarding your financial responsibility in this Hodes-Elliff partnership?

A. I think Hodes said he was going to supply the money and I was going to do the work. I think that is about what it amounted to.

Q. I believe you testified, Mr. Elliff, that Mr. Hunter and you were present at a meeting in San Francisco relative to Abbott Lane—I mean the Coast Range Lumber Company, is that correct?

(Testimony of George F. Elliff.)

A. We were.

Q. Who else was present at that meeting, where was it held, and about what time?

A. About nine o'clock in the morning in the lobby of the Fairmont Hotel, and Mr. Clements, Mr. Sullivan, Mr. Charles Lannin, Mr. Collins, John Hunter and myself.

The Court: When was this?

The Witness: This is in the Spring of 1951.

The Court: Aren't we going pretty far back, counsel, in talking about what happened in 1951?

Mr. Jacobs: Your Honor, the purpose of this is to show that the Twin City Company and Twin City Lumber Company were conversant for a long time back with the financial affairs of Mr. Elliff. I believe it is important in showing that knowledge in connection with the allegation of fraud. I am going to connect this now to the present time, to show how far it did go back and how long it continued.

The Court: That is long before the present Pine Supply Company was formed, wasn't it?

Mr. Jacobs: I will shorten as much as possible any questions relating to that far back and bring us up to the present time.

Q. At that time, at that meeting, was there a discussion of the financial affairs of the Coast Range Lumber Company?      A. Yes.

Q. And was Mr. Hunter told what the financial affairs were?      A. Yes.

Q. He was told what the financial condition of



(Testimony of George F. Elliff.)

the Coast Range Company was?           A. Yes.

Q. What was it? What was the financial condition of the Coast Range Lumber Company?

A. Critical. [339]

Q. When you say critical what do you mean? In dollars and cents or what were the excess of liabilities over the assets of the Coast Range Lumber Company at that time?

A. It was all liabilities at that time.

Q. What was the extent of the liabilities?

A. \$120,000.00.

Q. Did you have occasion to have any conversations with Mr. Hunter at a later date than this regarding the liabilities of Coast Range Lumber Company and your proportion of those liabilities?

A. Yes.

Q. Did you have a conversation with Mr. Hunter in this regard in the early Spring of 1953? Or if not, when was the first conversation held after this——

A. 1952, I believe.

Q. Did you hold various conversations with Mr. Hunter in 1952 in this regard?

A. 1951 and 1952, yes.

Q. When did the affairs of the Coast Range Lumber Company wind up?

A. In the Spring of 1952.

Q. In the Spring of 1952?           A. Yes.

Q. Did Mr. Hunter have any business dealings as Twin City Lumber Company or as Twin City Company with this corporation? [340]

A. They did.

(Testimony of George F. Elliff.)

Q. Did the corporation owe the Twin City Lumber Company or the Twin City Company any money?

A. Coast Range owed Twin City Lumber Company from October, 1951 until around April or May of 1952 in the neighborhood of \$20,000.00.

Q. Was this a secured indebtedness?

A. As far as Mr. Hunter was concerned it was secured by lumber, yes.

Q. Did you have occasion to be in the Long Beach area to sell some of this lumber of the Twin City Company, that the Twin City Company had sent to the corporation known as the Coast Range Lumber Company?      A. Yes.

Q. When was this?

A. From October to April or May of the following year I was there almost once a week.

Q. What year was that?      A. 1951 and 1952.

The Court: Was where once a week?

The Witness: In Los Angeles, in Mr. Hunter's office; I may state on an average of once a week.

Q. (By Mr. Jacobs): During this time did Mr. Hunter ever express any knowledge of your financial affairs, your private financial affairs? [341]

A. Did he express?

Q. Yes. Just answer it yes or no.      A. Yes.

Q. Did he discuss with you any particular financial indebtedness which you had?      A. I did.

Q. You did?      A. I did.

Q. What did you tell him?

(Testimony of George F. Elliff.)

Mr. Shapro: When, where and who was present, please?

Q. (By Mr. Jacobs): When did these conversations take place, where, and who was present?

A. In the year 1952 sometime, early Spring, I would say, in the Spring of 1952.

Q. Where were the conversations held?

A. In Mr. Hunter's office on Beverly Drive, Beverly Hills, California.

Q. And who was present at those conversations?

A. The one I have the nearest recollection of, there was just Mr. Hunter and myself.

Q. And you said that you told him something of your financial affairs. What did you tell him?

A. I told him how broke I was over this Coast Range Lumber Company and what expense I had gone to to clean this up for him personally, which I hoped he appreciated. [342]

Q. Did you mention any figures?

A. Yes, I think I did.

Q. What were the figures you mentioned?

A. Around \$20,000.00 that I either had invested or owed.

Q. Did you tell him what you owed?

A. I remember stating the note that bothered me a great deal.

Q. What note is that that you have reference to?

A. The note of the Bank of America that Mrs. Lannin had secured.

Q. How much was that note?

A. \$5,000.00.

(Testimony of George F. Elliff.)

Q. Did you tell him anything about your obligation on the Coast Range indebtedness?

A. Yes, I did.

Q. Did you tell him how much that was at that time?      A. Yes.

Q. What was it?

A. One-sixth of what was owed by the corporation.

Q. Can you break that into how much it was for you?

A. What is one-sixth of \$70,000.00? That is about what it was.

Mr. Shapro: \$11,333.00.

The Court: Was this a corporation, the Coast Range?

The Witness: Yes, but the indebtedness I was worried [343] about was secured by bank notes, not as a corporation, but as an individual.

Q. (By Mr. Jacobs): Did you have occasion to have a conversation with Mr. Hunter in May of 1953?      A. Yes.

Q. Where was this conversation held, who was present, and if you can, please——

A. My memory is vague but I think I had one prior to the setting up of the warehouse, which took place on May 3rd.

Q. Where was this held?

The Court: That is 1953?

The Witness: 1953. I know there were numerous phone calls in April over this matter, but the one

(Testimony of George F. Elliff.)

that is definite in my mind is the Sunday that I spent at his home on May 3rd, 1953.

Q. (By Mr. Jacobs): Who was present?

A. Mrs. Hunter, Mr. Collins and Miss Brown, John Groves, John Hunter and myself.

Q. During this conversation were your financial affairs discussed? A. Yes.

Q. Did you tell them what your assets were?

A. I doubt it.

Q. Did you tell them what your liabilities were?

A. He already knew them. [344]

Q. Did you discuss them? A. Briefly.

Q. What did you tell him that they were?

A. Rather what he told me.

Q. What did he tell you they were?

A. He said he was basing this, doing business on Mr. Hodes' statement as Abbott Pine Supply.

Q. Did he tell you what your financial standing was as of that time as far as he was concerned?

A. I think he inquired if some of the pressure was off, was all, Mr. Jacobs.

Q. Did you not discuss any indebtedness that you had at that time?

A. I do remember telling him the bank note by that time I had reduced a thousand dollars.

Q. To a thousand dollars?

A. I had reduced it to \$4,000.00 from \$5,000.00.

Q. Did you tell him about any of the other obligations which you had, if you had any?

A. Not to my recollection.

Q. Did he tell you of any that he knew of?



(Testimony of George F. Elliff.)

A. No, he was basing the business on my ability to get out and sell and work, in which he had a lot of confidence. That was all.

Q. Subsequent to that conversation did you have any further [345] conversations with Mr. Hunter regarding your financial affairs?

A. From time to time it was mentioned over phone calls and meetings with him, yes.

Q. When was the first of these meetings after this May 3rd meeting?

A. It was rather a phone conversation with Mr. Hunter over the dissolution of the partnership between Hodes and myself.

Q. And when was that conversation held?

A. In and around May 28th some time.

Q. Where did you receive the call?

A. I phoned him.

Q. You phoned him? A. Yes.

Q. Where did you call him?

A. I called him in Los Angeles.

Q. What was the conversation substantially?

A. Well, he was very definite that he could not continue with myself as sole owner without any capital to work on, and I told him I was making every arrangement I possibly could to put something in the company so that it would not fold up completely. After all, I was stuck. I had to do something, and I did have a couple of things in mind that I outlined to him.

Q. Did he say why he could not continue to operate with you as the sole owner? [346]

(Testimony of George F. Elliff.)

A. There is no doubt but what he did, yes.

Q. Do you remember what he said?

A. He said, "George, you don't have anything."

Q. He said, "George, you don't have anything"?

A. Well, "From what you told me you don't have anything." Let us put it that way.

Q. He said that?           A. Yes, he did.

Q. When was the next conversation you had with Mr. Hunter in regard to your financial affairs?

A. The pertinent one was when I borrowed \$7,000.00 to put into the business.. I called him and told him I had made arrangements to put \$7,000.00 in, which I thought would carry my percentage, which he was concerned about, of the thirty per cent that I had to pay upon receipt of the material into the warehouse.

Q. When was this conversation?

A. In June.

Q. Was this also a telephone conversation?

A. Yes.

Q. Did you tell him where you got the \$7,000.00?

A. I did.

Q. Where did you tell him that you had gotten it?

A. I told him I was able to borrow \$7,000.00 from my mother-in-law, Mrs. Pearl K. Lannin.

Q. Was there any other discussion in that particular telephone conversation regarding any other of the financial affairs of yours?

A. I don't believe so.

(Testimony of George F. Elliff.)

Q. Were there any other conversations after that one regarding your financial affairs?

A. Every time I became delinquent.

Q. How often would you become delinquent?

A. Well, I think the next time that it got serious was in the latter part of July or August. It seemed like monthly we were in a state of critical need of money?

Q. In your dealings with Twin City Company as Pine Supply Company what were the terms that you received shipments on?

Mr. Shapro: I will submit, if your Honor please, that the document is in evidence, the invoice, that is the best evidence of the terms. The terms on which they were made are specified in the warehouse agreement of May 4th, which is in evidence.

Q. (By Mr. Jacobs): I show you plaintiff's Exhibit 4 and call your attention to the note that says thirty per cent cash advance ten days after receipt——

A. Balance in accordance with warehouse agreement.

Q. Did you live up to the terms of this agreement?

A. When it was possible I did.

Q. Were your payments made according to this within the time called for? [348]

A. Seldom but frequently.

Q. I do not understand your answer.

A. When I had the money I lived up to the agreement.

(Testimony of George F. Elliff.)

Q. How often did you make the payments according to this that you have just read?

A. I couldn't answer that question without looking at the books.

Q. To the best of your recollection were you often behind in your payments?

A. More times behind than on time I would say, yes.

Q. How far behind were you?

Mr. Shapro: I submit, if your Honor please, the records are the best evidence. They show the dates they were due, they show the dates they were paid. In fact, that is the same objection that was made when I asked the same question by Mr. Huntington Jacobs this morning.

The Court: I think so, counsel.

Q. (By Mr. Jacobs): When Mr. Hunter would call you in regard to your delinquent payments, as you mentioned did you receive conversations in that regard, would he mention anything about your financial affairs? A. Yes.

Q. Can you place in time any of these telephone conversations? [349]

A. They were so numerous, Mr. Jacobs, to pinpoint one of them——

Q. Can you give us the general gist of what he would tell you in these telephone conversations regarding your financial condition?

A. Half the time he did not make sense, he was so mad that you could not understand much of what he was saying or trying to say.

(Testimony of George F. Elliff.)

Q. Did you get the general idea of what he was trying to say?      A. Yes.

Q. What was that?

A. He was wanting money.

Q. These conversations all took place prior to October of 1953, is that correct?

A. Some of them after October, too.

Q. Those were in regard to the purchases you made after the October transaction, the ones that you referred to as after October?

A. Or requests, as I recall now. The request was made at one time for an extension of time on the note. That was a violent one, too.

Q. So he also called you in regard to the delinquent payment on the note?

A. No, just for the request of extension. [350]

Mr. Shapro: It was not delinquent.

Mr. Jacobs: I stand corrected. Excuse me.

Q. Around the time of this October transaction there were many conversations held by you, Mr. Hunter, Mr. Ramsey, Mr. Baum and Mr. Pasquinnelli, is that correct?      A. Right.

Q. When did you first have a conversation with Mrs. Lannin in regard to the guarantee on the note?

A. Either the Saturday or Sunday morning, October 4th, I believe.

Q. Where did that conversation take place and who was there?

A. My wife, Mrs. Lannin and myself in Mrs. Lannin's home in San Jose.



(Testimony of George F. Elliff.)

Q. Did you ask Mrs. Lannin to sign as guarantor on the note?      A. I did.

The Court: What?

The Witness: I did.

Q. (By Mr. Jacobs): Did you explain to her what the purpose of the guarantee was?

Mr. Shapro: I object to that, if your Honor please, on the ground it is hearsay and not binding upon the defendants. There is nobody representing the defendants and Mrs. Lannin's home at this interview.

The Court: I think that is correct, counsel.

Mr. Jacobs: I might call the attention of the Court that the evidence should be admitted as to the defendant Lannin because Mrs. Lannin is also a defendant in this case. Mr. Elliff is the witness of the plaintiff in this case.

Mr. Shapro: Your Honor, here we have the thing that I spoke about when this case started. Here we have the essence of what I chose to call a conspiracy. Here we have a defendant, Mrs. Lannin, named in this suit for only one purpose: to permit this gentleman to cross-examine her son-in-law. There is no relief sought as against Mrs. Lannin by the plaintiff in this case whatever. I challenge counsel to show there is any sort of relief called for or even possible as against Mrs. Lannin on behalf of the plaintiff. There is an allegation in the complaint, if your Honor please, that her rights to the security remaining in the warehouse

(Testimony of George F. Elliff.)

at the time of bankruptcy might be affected in this matter.

At the opening of this case counsel told your Honor that in the meantime that has been adjudicated adversely to Mrs. Lannin. Therefore, if your Honor please, the fiction of Mrs. Lannin being a defendant in this action is now apparent in light of the observation just made by counsel, and I object to the question upon the ground that your Honor has already sustained it.

Mr. Huntington Jacobs: I want to be heard if I may. Mrs. Lannin was not joined as a defendant in this action [352] pursuant to any conspiracy. I have said that before. The trustee joined Mrs. Lannin because she was a party to this transaction, apparently a necessary party to this suit.

The Court: A necessary party to the suit?

Mr. Jacobs: Yes, your Honor.

The Court: Why?

Mr. Jacobs: Because we were asking that this note be declared void and that a guarantee be declared void, and I believe it is the general rule that the parties to a transaction who are or are likely to be affected by the Court's determination, whether favorably or unfavorably, ought to be joined as parties to the suit.

It is perfectly true, as counsel says, that the matter in controversy at the time this case began between Mrs. Lannin and the trustee has been determined by a final order in the bankruptcy proceeding. That is perfectly true.

(Testimony of George F. Elliff.)

The facts, however, still do remain that Mrs. Lannin was a party to this note, I mean a party to this guarantee, and still is. I think she is still a proper party, although perhaps not now a necessary party. That is the only observation I have to make. I am not making that in response to counsel's objection, but I am taking exception to his continued allegation that there is any conspiracy here on the part of counsel for the cross-complainant, myself, because there is none and there never has been any. [353]

Mr. Shapro: If your Honor would care to hear further on the subject I would be glad to proceed further.

The Court: Is any relief asked against Mrs. Lannin at this time?

Mr. Shapro: No, there is not, except relief that would affect her substantial rights, of course.

The Court: What are her substantial right? Her right to pay the money?

Mr. Shapro: That is it, exactly, your Honor, her right to pay the money.

Mr. Huntington Jacobs: It would not adversely affect her rights, your Honor. I think her interest would be subserved as a matter of actual fact, but I do not think it proper for the plaintiff to determine whether the affect upon her substantial rights would be favorable or unfavorable.

It seems to me that if they are to be affected at all she should be a party.

However, I want to observe that the bankrupt,

(Testimony of George F. Elliff.)

it seems to me, is in a different position. His interests are naturally, by force of the Bankruptcy Act, his rights have been transferred by operation of law to the trustee, and I want to note that that is the reason why I did not join the bankrupt as a party defendant, because it would seem to me to be anomalous to recognize him as having any interest adverse to the trustee. [354]

I did not think that he did have any interest that could be affected by the outcome of this case, because if the Twin City owes any claim against him, it seems to me it is very clearly a claim which should be asserted in the bankruptcy proceeding.

The Court: Apparently all this arises by reason of what they are trying to develop happened in a conversation. I do not know what happened as yet but I am going to admit it at this time subject to a motion to strike it out in order to proceed with the matter. All you are asking for is the conversation between Mrs. Lannin and Mr. Elliff and his wife, is that right?

Mr. Jacobs: That is correct.

The Court: All right, go ahead, counsel. Let us not have any leading questions in this conversation, counsel. You can ask him what was said and let us get it that way.

Mr. Jacobs: All right.

Q. Mr. Elliff, can you tell the Court what was said by the various parties to this conversation on this date that you just mentioned?

(Testimony of George F. Elliff.)

Mr. Shapro: Subject to the same objection, your Honor.

The Court: Yes. It will be stipulated all of this is received subject to a motion to strike.

Mr. Shapro: Thank you, your Honor.

The Witness: I went to Mrs. Lannin and pleaded with [355] her, and that is exactly the way I feel about it and felt——

The Court: Mr. Elliff, if this is to be of any value to me I have to hear it.

The Witness: I am sorry.

The Court: I am doing my best to hear, to listen, but I miss every once in a while something you say and I want to hear it all.

Mr. Jacobs: If you will face the Court, Mr. Elliff.

The Court: The last I heard, you said you pleaded with her——

The Witness: I pleaded with her to come to my rescue and get me out from under this pressure that I was under constantly from Twin City, and the only way I knew how to continue in business was to get out from under, and the only way I could get out from under was to give them substantial security in a note or pay them off in cash, which they would only give me two alternatives to do, and the note was the simplest way because it involved no outlay of cash at that time.

She thought it over and said, "Yes." I don't know whether she said "Yes" at that particular time but she did say yes after due investigation.



(Testimony of George F. Elliff.)

Q. (By Mr. Jacobs): Was there any conversation at that time regarding the trust agreement?

Mr. Shapro: If your Honor please, we have some leading questions. [356]

The Court: Counsel, that is just what I do not want to get into is leading questions. This witness is capable. He understands. You were asked what was said in the conversation. Give what was said, and when you finish, stop and we will go on to something else.

Mr. Jacobs: I will withdraw the question.

The Court: I will permit you to ask him what else was said, counsel, and then have him tell us, and when he does, that stops it.

Q. (By Mr. Jacobs): What else was said at this conversation, Mr. Elliff?

A. I mentioned that we could work out something to protect her in the form of warehouse receipts which we already had, we could transfer over, in which she would have the same rights as Mr. Hunter had, and that was her security in a sense for signing the note.

Q. Was anything else said?

A. Not of importance to the Court, no.

Q. Did you have any other conversation with Mrs. Lannin in regard to this October transaction?

A. Yes.

Mr. Shapro: Before October?

Mr. Jacobs: Before October.

Q. Before the trust agreement and the note were signed. A. Yes. [357]

(Testimony of George F. Elliff.)

Q. When was that conversation held, where, and who was present?

A. On the morning of October 8th in Mr. Pasquinelli's office.

Q. Who was present?

A. Mr. Pasquinelli, Mrs. Lannin, Mr. Baum and myself.

Q. What was said by whom at that conversation?

A. The details were explained to Mrs. Lannin.

Q. What details were explained to Mrs. Lannin?

A. I am coming to that—of the trustee agreement that had been roughly sketched out the day before by Mr. Pasquinelli, Mr. Ramsay, Mr. Baum and myself.

Q. Had Mrs. Lannin taken any part in these details that you speak of?

A. No, sir, she was not present until the morning they were getting ready to type them up.

Q. But these details were gone over with Mrs. Lannin?      A. Yes, they were.

Q. Was there any other conversation at this particular incident?

A. No, we broke up to give time to Mr. Pasquinelli to prepare because time was the essence. The warehouse was closed, and I was in a hurry to reopen it, and the only way I could get it reopened was to get the trustee agreement signed which the Twin City had requested, or Mr. Ramsay had [358] requested, and the signing of the note, and to expedite that, time was of the essence, and so we got

(Testimony of George F. Elliff.)

out of Mr. Pasquinelli's office so he could prepare it formally and had it prepared that evening for us, at which time she signed it.

Q. When was the next conversation you had with Mrs. Lannin in connection with this transaction?

A. That evening, on October 8th, when I went by to pick up the signed copy.

Q. You went by where? A. Her home.

Q. Who was there?

A. I believe Mr. Baum was there—I am not certain but I believe Mr. Baum was there. Whether he went in the house I am not sure. He might have stayed in the car.

Q. You, Mrs. Lannin and Mr. Baum?

A. I am not certain of Mr. Baum but Mrs. Lannin and myself.

Q. Was there any conversation held in regard— A. It was personal.

Q. It was personal? A. Yes.

Q. What did you testify was the reason why you had gone there?

A. Because of the demands of the Twin City Lumber Company to get this thing signed.

The Court: You went there to get the document signed, didn't you, in the evening? [359]

The Witness: Yes, sir, exactly.

Q. (By Mr. Jacobs): Had it been signed as of this time? A. I believe so, yes.

Q. What did you do with the document?

A. I signed a copy, I believe, at that time and

(Testimony of George F. Elliff.)

left it with her, and I had another copy unsigned that I took to San Rafael with me.

Q. That was just preceeding your trip to San Rafael?

A. I picked it up for that purpose so I could deliver it to Mr. Ramsay in San Rafael.

Q. What documents did you pick up from Mrs. Lannin?

A. There was that letter of transfer, one copy or two, I don't remember which, of the trust agreement, and the signed note. They had requested a financial statement, which I did not pick up until the following morning at the bank.

Q. Did you give to Mrs. Lannin at any time from May until the October transaction was completed a financial statement?

Mr. Shapro: I am going to object to that anew, if your Honor please, on the ground it is incompetent, irrelevant and immaterial as to what information, financial or otherwise, was given to this witness to his mother-in-law antedating the October agreement. It is completely incompetent, irrelevant and immaterial. This is not on the hearsay objection; this is on the basis of its materiality.

Mr. Jacobs: We haven't got an answer yet. [360]

Mr. Shapro: I am trying to see that you do not get it, if the Court rules with me.

The Court: This is your cross-complaint, isn't it, counsel?

Mr. Jacobs: That is correct.

Mr. Huntington Jacobs: The reason why we did

(Testimony of George F. Elliff.)

not object to it, your Honor, is simply in the interest of saving time.

Mr. Robert Jacobs: I could call this witness, your Honor, as Mrs. Lannin's witness, but since you ruled I cannot ask leading questions, I can get the same information out of him now perhaps and save the Court's time.

Mr. Shapro: Your Honor, whatever information he did or did not give his mother-in-law, without first having been tied up with us, is completely hearsay to us and not binding upon us. Our position, if your Honor please, is that no matter what he told Mrs. Lannin or what he did not tell Mrs. Lannin, unless we are shown to have authorized it or participated in it we cannot be tarred with that brush, if I may use that expression, and this is an important point in this case, regardless of whether it is on her cross-complaint or in connection with the cross-examination of the plaintiff's witness. The situation is still this. Mr. Elliff got his mother-in-law to endorse a note in favor of Twin City Lumber Company for an amount of money which was not one penny in excess of what he owed at the time. He testified three minutes ago the [361] purpose of the trust agreement was to secure her and give her the same warehouse receipts that the Twin City had, and that was exactly what she got. The estate of the bankrupt was not in any way depleted nor was it increased, nor were the liabilities increased or decreased by this entire transaction.



(Testimony of George F. Elliff.)

Nobody in the world could have been defrauded unless he misrepresented facts to his mother-in-law, in which case the action for fraud is by his mother-in-law against him.

Where in this picture, if your Honor please, Twin City Lumber Company has been shown thus far to have any possible connection with any fraud as against the bankrupt's estate, which is the gravamen of the complaint, or with any fraud, as far as the cross-complaint is concerned, is more than I can understand, your Honor, and that is why I think we have been spending all of this time in pursuance of a cause of action which can have no benefit to anybody except Mrs. Lannin, who has no right to the protection of this Court or the trustee in bankruptcy.

The Court: In the cross-complaint the named defendants therein are the Twin City Lumber Company in its various aspects.

Mr. Shapro: Yes, your Honor.

The Court: And no one else.

Mr. Shapro: That is right.

The Court: The bankrupt is not a cross-defendant. The trustee in bankruptcy is not a cross-defendant. And as to what [362] this witness told his mother-in-law, I cannot see how that can affect a cross-complaint against the Twin City Lumber Company.

Mr. Robert Jacobs: If it please the Court, there is an allegation in the complaint of fraud against

(Testimony of George F. Elliff.)

the Twin City Company. We believe the evidence has indicated and will further indicate and show that the acts of that constituted fraud were a part of a conspiracy in which Twin City was a party, a conspiracy to defraud not only the other creditors, or the creditors of the bankrupt, of whom Mrs. Lannin was at that time also, but to defraud Mrs. Lannin; the acts of Mr. Elliff and the statements of Mr. Elliff given to his mother-in-law were part of that fraud to which Twin City was a party, and therefore should be admitted against Twin City.

Mr. Shapro: If your Honor please, where has there been an iota of evidence of a conspiracy? The evidence is that Mr. Hunter was pounding on the desk and yelling over the telephone that he wanted his money. The money was justly due him. Where is there a conspiracy when Mr. Hunter says, "You can't have your warehouse receipts unless I can get a guarantee." Where does that tie in Twin City with any such fraud? It is beyond my comprehension.

The Court: I cannot see, counsel, where any statement that this witness is alleged to have made to Mrs. Lannin—I guess you are referring to the allegations in Paragraph 3 of your cross-complaint, which I have not read in detail, this [363] witness not being a defendant in the action—how that could affect your cross-complaint, counsel.

Mr. Robert Jacobs: As I just stated, your Honor, I believe there is evidence that shows that Twin City was a party to a conspiracy to defraud the

(Testimony of George F. Elliff.)

creditors of the bankrupt. It was shown by Mr. Pasquinelli's testimony——

Mr. Shapro: In the first place, if your Honor please, in this cross-complaint there is no relief for the bankrupt estate. Let us assume there was fraud to the bankrupt's estate for the sake of argument only.

This cross-complaint is for whose benefit, your Honor? Mrs. Lannin.

The Court: And against whom?

Mr. Shapro: Against the Twin City Lumber Company.

The Court: Yes, but you have to show some action of the Twin City Lumber Company, and I do not think you can show it by testimony of this witness's statements to his mother-in-law.

He has already testified as to what the conversation was when he went there. You asked him about that and he related it in full. I admitted it subject to a motion to strike in order to save time, but I do not see how what you are trying to do now can develop a cause of action against the Twin City Lumber Company. It might if you were bringing an action against this man here to set aside the note or some action against him here for damages, we will say, you might show that he had [364] fraudulently represented things to her or something of the kind, if that is the purpose, but at the moment I do not see how any fraudulent statement that he makes—let us assume for the moment they are fraudulent—can affect Twin City. Maybe I do

(Testimony of George F. Elliff.)

not get your point clearly, counsel, but that is the way it occurs to me.

Mr. Huntington Jacobs: May I make an observation, your Honor, which has to do to some extent with the trustee's case?

It does seem to me that there is evidence in the testimony of Mr. O'Connor and Mr. Pasquinelli, Mr. Baum and Mr. Elliff that this guarantee was procured by not merely Elliff on his own initiative but by Elliff on the initiative also of Twin City Company.

The same is true of the trust agreement, and if that is true, and there was a concert of design, then it seems to me that each of the parties who asserted that design is responsible for what any of them did in furtherance of that design, and that would include the representations that each of them made in furtherance of that design.

It may be counsel's question does not sufficiently show that it was in furtherance of the design but it does not seem to me that when an objection lies as showing what these parties who have asserted it did, whether in the presence of each other or individually to further their common design——

The Court: Counsel's statement is strangely familiar to [365] me in the law of conspiracy. Counsel has apparently had some experience in the criminal aspects of that, and it is true that whatever one conspirator says after a conspiracy has been formed is binding upon all of the others. It is also true that sometimes a declaration of a conspirator

(Testimony of George F. Elliff.)

is substantial proof of the existence of the conspiracy itself.

Mr. Huntington Jacobs: That is right.

The Court: For that purpose it is possible that this might go in, if it eventually tends to prove a conspiracy. It may never tend to prove a conspiracy but this is their contention that it does tend to prove such a conspiracy.

Mr. Shapro: I understand the purpose, your Honor. I do not think the question even tends to prove that, but that, of course, is for your Honor.

The Court: I understand that is the purpose. I will permit it on that basis.

(The last question was read by the reporter.)

A. To my knowledge she did not request one.

The Court: You did not give her one. The answer is no, then.

The Witness: No.

Q. (By Mr. Jacobs): Did any give her a financial statement at your direction?

A. We did some time in October give her——

Q. When you say "We"—— [366]

A. Mr. Baum gave her at my request a list of the accounts receivable, I believe, and the accounts payable.

Mr. Shapro: Before or after October 8th?

The Witness: I believe before. I believe before, because it seems we had to turn it over to Mr. Robidoux.

The Court: Mr. Robidoux?

The Witness: Yes, sir.



(Testimony of George F. Elliff.)

Q. (By Mr. Jacobs): Do you remember what that financial statement showed?

Mr. Shapro: I object to that, if your Honor please, on the ground that the document is the best evidence.

The Court: I think that is right.

Q. (By Mr. Jacobs): Was there a formal document presented do you know, Mr. Elliff?

A. No, I do not think it was formal.

Q. What kind of a financial statement was given?

Mr. Shapro: I make the same objection, if your Honor please. Whatever was given was given in writing. The writing is the best evidence of its contents.

The Court: Was it given in writing?

The Witness: Yes, it was given in writing.

The Court: Do you have a copy of it?

The Witness: No, sir, I do not.

The Court: Do you know where a copy is?

The Witness: I am sure that Mr. Robidoux would have one in his file. [367]

The Court: By whom was it prepared?

The Witness: Mr. Joe Baum.

Q. (By Mr. Jacobs): It was prepared by Mr. Joe Baum at your direction? A. Yes, sir.

Q. Was that the last conversation you had with Mrs. Lannin, the one in which you went over to her home and picked up the papers, the documents, regarding the October transaction prior to any demand for payment by Twin City Lumber Company

(Testimony of George F. Elliff.)

or by representatives of Twin City Lumber Company?

A. I believe I called her after Mr. Ramsay pulled this surprise on me about the trustee agreement and the trustee account, and I believe I telephoned. I don't believe I went back.

Q. Will you explain that statement?

A. Well, we went in to draw up the note and he insisted on this trustee account, which came as somewhat of a shock to me.

Q. When did this occur?

A. Prior to going to Mr. O'Connor's office.

Q. Who was present at this discussion?

A. It was discussed at Mr. O'Connor's office with Mr. Baum, Mr. Ramsay and myself.

Q. Was Mr. O'Connor present?

A. Yes. [368]

Q. And this was the occasion which it has previously been testified is the time when the note was prepared in a rough draft by Mr. O'Connor?

A. That is correct.

Q. I believe you testified there was some discussion of a trust agreement?

A. Mr. Ramsay, as I said, brought it up.

Q. Can you tell us what Mr. Ramsay said in that regard?

A. He said that we, meaning he as a representative of Twin City, were insistent upon a trustee account where they could be sure of getting their money.

Q. Did he say anything further?

(Testimony of George F. Elliff.)

A. Not until we drew it up.

Q. After it was drawn up was there a conversation held in that regard?

A. He had to approve it in San Rafael that particular night that we speak of so often.

Q. When you say he had to approve it what do you base that on?

A. I presume he was instructed. That is merely an opinion.

Mr. Shapro: I move to strike out his opinion.

The Court: It may go out.

Mr. Jacobs: Q. Did he make any statement to you in that regard?

A. He made a statement that I was to deliver it or to mail [369] it to him, which I thought by facilitating things it would be better if I did deliver it.

Q. When you say "it," to what do you refer?

A. I refer to the trustee agreement.

Q. Am I to understand your testimony that Mr. Ramsay told you that you were to submit the trust agreement to him? A. Yes.

Mr. Shapro: The word was "delivered", that the witness used.

The Witness: Yes, delivered.

The Court: Gave a copy of it to him.

The Witness: That is right.

Mr. Jacobs: Q. And that he was to approve it? Is that what you stated?

A. He wanted to read it—approve it, read it.

Q. There has been some evidence, Mr. Elliff, that

(Testimony of George F. Elliff.)

Mr. Pasquinelli discounted acting as trustee some time in March of 1954.      A. Right.

Q. What was done with the funds that were in the trust account at the time of this dissolution?

Mr. Shapro: Your Honor, that has already been asked and answered.

The Court: Not by this counsel.

Mr. Shapro: That is true. [370]

The Witness: What was done with the funds? A check was written to Mrs. Pearl K. Lannin and in turn she endorsed the check over to the First National Bank, Willow Branch, I believe it is, San Jose, and a new trustee was named, which was Miss Juanita Barnhardt.

Mr. Jacobs: Q. How was the check delivered or sent from Mr. Pasquinelli to Mrs. Lannin?

A. If I am not mistaken, Mr. Baum was the gentleman who brought it to me.

Q. Mr. Baum brought it from whom? Do you have any personal knowledge as to from whom?

A. From Mr. Pasquinelli, I believe.

Q. What did you do with it?

A. I took Mrs. Barnhardt to the bank and we established a new account at the Willow branch of the First National Bank in San Jose.

Q. You testified, did you not, that this check was made out to Mrs. Lannin?

A. Mrs. Pearl K. Lannin.

Q. Was this check endorsed by Mrs. Lannin when it was delivered to you?

A. Yes, and I believe—yes.

(Testimony of George F. Elliff.)

Q. Were you the one who obtained the endorsement? A. I could have, Mr. Jacobs.

Q. You do not remember? [371]

A. No, no.

Q. Do you have any personal knowledge as to where the money that was put into this trust account came from? A. Yes.

Q. Where did it come from?

A. It came from collections of accounts receivable of Appliance Supply Company.

Q. After Mr. Pasquinelli resigned as trustee a new trustee was appointed and the trustee account continued, is that correct? A. Yes, it did.

Q. Where did the funds come from that went into the new trustee account?

A. From the same source, accounts receivable of Appliance Supply.

Q. Do you have any knowledge of any other funds that went into that trust account except the funds that came from accounts receivable?

A. I have no knowledge. I don't believe there were.

Mr. Jacobs: I think that is all.

Mr. Shapro: Your Honor, may I have the redirect on the cross-complaint first?

### Redirect Examination

Mr. Shapro: Q. Mr. Elliff, when you say the proceeds of accounts receivable of Appliance Supply went into the trust [372] account of Mr. Pasquinelli and subsequently to his successor you mean,



(Testimony of George F. Elliff.)

do you not, the proceeds of sales of lumber evidenced by invoices and accounts receivable thereafter?      A. That is right.

Q. Mr. Elliff, you have just testified a few moments ago that Mr. Ramsay pulled a surprise on you in demanding the trustee agreement. Isn't it a fact that three minutes before in this very Court you testified that you suggested that as a means of protection to Mrs. Lannin?      A. I did not.

Mr. Shapro: I will stand on the record on that.

Q. May I read to you, Mr. Elliff, from the trust agreement which is in evidence——

A. Could I straighten you out before? Because I said the warehouse receipts would be her protection, not the trustee agreement.

Q. What is in the trustee agreement except the proceeds of sale of lumber from the warehouse besides warehouse receipts.

A. May I have that question again?

Mr. Jacobs: That is objected to. The document itself is the best evidence.

Mr. Shapro: I will withdraw the question.

Q. Are you familiar with this recital in the so-called trustee agreement:

“Whereas Pearl K. Lannin, also know as [373] Mrs. John Lannin, has signed a promissory note as a guarantor, and it is the desire of all parties to this agreement that this trust agreement be carried out primarily for the purpose of protecting said Pearl K. Lannin and to hold her harmless or indemnify her as guarantor in said promissory note.”

(Testimony of George F. Elliff.)

Were you familiar with that when you made your testimony today?

A. I had read it but it has been some time.

Mr. Shapro: I have no further redirect on this subject.

Mr. Huntington Jacobs: I have some recross. I have one question on redirect.

### Recross Examination

Mr. Huntington Jacobs: I do not recall whether you made it clear how much in money or monies worth, I should say, of your stock in trade you bought from other suppliers than Twin City following October, 1953.

The Court: He said he bought two-thirds of it from other suppliers.

Mr. Jacobs: That was my recollection, your Honor, but I wanted to get it in dollars and cents if the witness can give it to us.

The Witness: In dollars and cents?

Mr. Jacobs: Q. Yes. [374]

A. How much total did I buy from other sources besides Twin City from October to June or July?

Q. As near as you can.

A. \$40,000.00 or better, it covered, I think.

The Court: That is the total amount.

The Witness: I would think so, yes.

The Court: Two-thirds of which you bought from suppliers other than Twin City, is that correct or not?

The Witness: I think my testimony this morn-

(Testimony of George F. Elliff.)

ing was two-thirds of the inventory left in the warehouse at the time of bankruptcy were from sources other than Twin City.

Mr. Shapro: No, that was not your testimony.

Mr. Huntington Jacobs: No, I agree. I will clarify this thing if I may.

Q. You testified that you did make some purchases in November, 1953, from Twin City?

A. \$4,000.00—almost \$5,000.00, yes.

Q. Does that \$40,000.00 that you just mentioned include the \$5,000.00 or not?

A. No, I don't think it would.

Q. You think it would not?

A. Not what I have in mind, no.

Q. What do you have in mind specifically?

A. I am thinking of purchases from Durable Plywood, Harbor Plywood, the Whittaker Company, Getts Brothers Company, and I [375] think that aggregate would easily come to \$40,000.00.

Q. How much of that \$40,000.00 purchased from other creditors than Twin City subsequent to October has been paid?      A. That is a tough one.

Q. Approximate it if you can.

Mr. Shapro: For your purposes, Mr. Jacobs, I do not think the amount is important; I will be glad to stipulate that some portion of that remains unpaid.

Mr. Huntington Jacobs: I would like to show that all but a comparatively small fraction of it remains unpaid.

(Testimony of George F. Elliff.)

The Witness: I would say \$8,000.00 might have been paid off, roughly \$8,000.00.

The Court: \$8,000.00 out of \$40,000.00?

The Witness: I think so. It comes to mind because of the forms we filled out in the bankruptcy. I think there was \$32,000.00 owing.

Mr. Jacobs: Q. Left owing?

A. I believe so.

Q. When you filed your schedules. I think that is all.

Mr. Shapro: May I ask one question?

The Court: The answer is yes as to one question.

Mr. Shapro: Q. Mr. Elliff, to your knowledge was Twin City Lumber Company notified of the resignation of Mr. Pasquinelli and the substitution of someone else as trustee under the trust agreement? [376]

A. I don't know where you think of all these questions. I best can answer you to say why Mr. Pasquinelli quit.

Q. I am not interested in that.

A. That would answer your question, but that is the only way.

Q. I don't see how it could answer. If you think it would I am willing to listen to it if the Court is.

The Court: Go ahead.

The Witness: He asked to be relieved of the position because of the pressure by Twin City on the thing, and I had no other choice but to find some other way to take it over.

(Testimony of George F. Elliff.)

Mr. Shapro: That is not the question at all. I want to know, so far as you know, if anybody notified Twin City Lumber Company of the fact that Mr. Pasquinelli had resigned and someone else had been substituted.

A. Not to my knowledge.

Mr. Shapro: That is all.

Mr. Huntington Jacobs: That is it. With the permission of the Court and counsel I will excuse the witness.

Mr. Shapro: That is satisfactory.

JUANITA H. BARNHARDT

a witness called by the plaintiff, sworn.

The Court: State your name and occupation for the record.

The Witness: Juanita H. Barnhardt. [377]

Direct Examination

Mr. Huntington Jacobs: Q. Where do you live, Mrs. Barnhardt?

A. At 566 Patton Avenue, San Jose.

Q. Are you employed? A. Yes, I am.

Q. What is your business or occupation?

A. I am bookkeeper for the San Jose Lumber Company.

Q. Were you employed by Mr. George Elliff during the period from May of 1953 to June of 1954?

A. Let's see. Get the dates straight. I did part time work for Mr. Elliff at the Pine Supply Company, through, I would say, June, July, August, September and October of 1953. I did his billing,



(Testimony of Juanita H. Barnhardt.)

his invoicing. I was in the office next door and I did part time work there.

Then in November of 1953 I was appointed by the Douglass Guardian Warehouse Company as custodian, so I no longer was under Mr. Elliff's payroll but under the Douglass Guardian.

Q. Did you not thereafter keep books for Mr. Elliff?

A. I helped—I kept up and did all his billing and I helped Mr. Baum; he was doing a lot of research work back in the old partnership days, and I did a lot of work with Mr. Baum on the books, also for Pine Supply.

Q. And you kept the current accounts, didn't you, of the business subsequent to becoming the custodian? [378]

A. No. Mr. Baum kept books. I helped him.

Q. During the year 1954 who kept the books of the company?

A. Mr. Baum set up the books as of January 1st, the way I remember.

Q. January 1st of what year, Mrs. Barnhardt?

A. 1954, and he completed the tax returns for 1953. He was working there through the month of January and February and I would say half of March, up to the time of filing, and I kept the entries up and anything that came up, of course, I asked him how he wanted it done.

Q. He being Mr. Elliff, I suppose, or Mr. Baum?

A. Mr. Baum.

Q. Did you act in any other capacity for Mr.

(Testimony of Juanita H. Barnhardt.)

Elliff besides bookkeeper, as you indicated, and besides acting as a custodian?

A. I was also the trustee for Mrs. Lannin.

The Court: I would suggest, Mr. Jacobs, that you use leading questions until you get to some controversial question.

Mr. Jacobs: Thank you, your Honor. She is not a hostile witness as far as I know.

Q. In other words, you throughout the period that you have mentioned, beginning in June, 1953, I take it, and ending in June of 1954, you acted as a sort of general manager and bookkeeper of the business of Mr. Elliff, the Pine Supply [379] company, is that substantially correct?

A. Yes, sir. I think that the last date that I had anything to do with, was in the middle of July when I gave up the trustee account.

Q. When did you become trustee of this trust account you referred to?

A. I believe it was March 24th, 1954.

Q. Did you see the trustee agreement under which you acted as trustee? Would you recognize it if you saw it?

The Court: Counsel, what are trying to say? Lead the witness on any matter of this kind.

Mr. Jacobs: Very well. I can shorten it greatly that way.

Q. You succeeded Mr. Pasquinelli, did you not?

A. That is right.

Q. As successor trustee where did the funds that you handled go to, do you know?

(Testimony of Juanita H. Barnhardt.)

A. Well, some would be received directly by me through the mail. It would come in and I would give them to Mr. Elliff.

The Court: That would be from customers?

The Witness: From customers. Some he would collect and bring in and turn over to me and I would make the deposits to the First National Bank in Willow Glen and see that they were taken care of.

Q. You heard Mr. Elliff's testimony as to [380] how this trust was started, did you?

A. Yes, he and I started the account.

Q. Does his testimony agree with your recollection as to how that commenced? A. Yes.

Q. That is your own account? A. Yes, sir.

Q. You made disbursements on this account from time to time, did you not? A. Yes, I did.

Q. From the funds that you have referred to?

A. Yes, sir.

Q. I show you Plaintiff's Exhibit 4, Mrs. Barnhardt, which is a photostat of the Twin City account of monies received from Mr. Elliff during the period of your trusteeship as well as previously.

A. Yes, this is the open account.

Q. Yes, received on the open account during the period of your trusteeship.

Mr. Shapro: There are only three items there during that period.

Q. (By Mr. Jacobs): did you issue the three checks—I mean the checks for the amounts I am pointing to, \$3,170.00?

A. These are the invoices.

(Testimony of Juanita H. Barnhardt.)

Q. Oh, those are the charges? [381]

A. March 29th.

Q. No, here are the credits over here.

A. March 29th—this one February 3rd.

The Court: Haven't they all been testified to?

Mr. Jacobs: Yes, by other witnesses.

The Court: I have a record of them.

The Witness: Yes, I would have issued those checks.

Q. (By Mr. Jacobs): The \$1,200.00 one is the one you say you did not issue? A. No.

Q. Do you know where that came from?

A. I believe that was a check paid by Mr. Elliff.

Q. As his bookkeeper would you know that?

A. That is my recollection.

Q. You also made payments, did you not, on account of this promissory note?

A. Yes, I did, but I turned over all my records last Summer to the Bankruptcy Court and I can't go from memory on what amount was paid and when.

Q. No, I am not asking you to.

Mr. Shapro: I will stipulate, if your Honor please, that any payments that were made on the note as shown by the Exhibit here during the period of that trusteeship were paid by her from that account.

Mr. Huntington Jacobs: The Exhibit to which [382] counsel refers being, if I remember correctly, Plaintiff's 10 or thereabouts.

The Court: It would not be 10.

(Testimony of Juanita H. Barnhardt.)

Mr. Jacobs: That is it. Counsel's stipulation is, as I understand it, that the payments as shown by plaintiff's Exhibit 14, the payments by the bankrupt through the trustee or otherwise on account of the promissory note as shown by this Exhibit 14 are correct.

Mr. Shapro: I stipulated to that a long time ago, two days ago. I am stipulating now that the payments which according to Exhibit 14 were made during the period that the witness acted as trustee were made by her as trustee.

Mr. Jacobs: That is all.

Mr. Shapro: No questions.

#### PEARL K. LANNIN

called on behalf of the plaintiff, sworn.

The Court: Will you state your name and address for the record?

The Witness: Pearl K. Lannin, 1394 Sierra Avenue, San Jose.

#### Direct Examination

Q. (By Mr. Jacobs): Mrs. Lannin, you are one of the defendants in this action by the trustee and you are also the cross-complainant in this case? You are the Mrs. Lannin who is named as one of the defendants in this case? [383] A. Yes.

Q. You have heard the testimony of your son-in-law, Mr. Elliff, regarding the way in which you happened to endorse this promissory note which is in evidence? A. Yes.



(Testimony of Pearl K. Lannin.)

Q. Does your recollection accord with his testimony?

Mr. Shapro: If your Honor please, I am sorry. In this case I have to object.

Mr. Jacobs: Very well. I will be guided by counsel's objection. I wanted to save time.

Q. You did, did you not, have a transaction in October of 1953 in the course of which you executed certain documents? A. Yes.

Q. I will show you this installment note for \$28,000.00 which is marked Defendant's Exhibit B. It purports to bear your signature to a clause guaranteeing payment of it. Is that your signature?

A. That is right.

Q. I show you also a document entitled "Trust Agreement" and dated October 8th, 1953, and which purports to bear your signature as beneficiary of the trust as described in that document.

A. That is my signature.

Q. That is also your signature. Mrs. Lannin, how did you happen to execute this guarantee?

A. You mean the note?

Q. Yes. Who asked you to do it?

A. My son-in-law and daughter came over to the house and he said he brought the daughter along——

Mr. Shapro: If your Honor please, for the purpose of the record, if the witness is going to testify as to a conversation between her son-in-law and daughter, in the absence of any representative of the Twin City Lumber Company, what we want is

(Testimony of Pearl K. Lannin.)

to interpose an objection on the ground it is hearsay and not binding upon the defendant.

The Court: It may be admitted subject to the same motions made before.

Mr. Shapro: Thank you.

The Witness: They came over and he said that the reason he brought my daughter with him was that she was interested in it, too, being his wife, and then he told me that he needed some money to keep going in the business.

At the time I didn't understand it was closed up by the lumber company.

Mr. Shapro: If your Honor please, what the lady understood is not what the question calls for.

The Court: Just say what was said, Mrs. Lannin, as well as you can, what you said, your son-in-law and daughter in the conversation.

The Witness: Anyhow he stated he wanted this amount, [385] to make it as short as I can, and of course——

The Court: I am not asking you to make it short. Don't get that impression. I want you to say what was said, but just what was said, please.

The Witness: Well, of course, I was stunned to be asked for this much money, but at the same time, as I understood, just by observing that he had this large building out there and a lot of material there, not having any idea it would come to this point, we would ever be at Court with it, I did it out of the good of my heart, thinking that perhaps that was his one big chance, and my

(Testimony of Pearl K. Lannin.)

thoughts were that if I didn't, I might always be blamed that I didn't give him his chance and I said—I didn't say at that time that I would do it, but then a little bit later he came back or telephoned—I can't remember just how that I finally said I would do it, I would go along with it. I think that is the gist of everything.

Q. (By Mr. Jacobs): What investigation, if any, did you make into his affairs before you said yes?

A. Well, of course, observing the building and all out there, I assumed they were going along pretty nicely, and then he told me they were wanting to draw up a trust agreement——

The Court: They wanted what?

The Witness: To draw up a trust agreement—  
[386] and I said I wanted to—he wanted to know if I would come up to Mr. Pasquinelli's office to go over that. I went up and Mr. Baum was there, whom I had never met before, and we went into Mr. Pasquinelli's office and they kind of told what they were doing, that twenty per cent of it—just before this—there is one thing I forgot——

Q. (By Mr. Jacobs): Just a minute. Won't you complete that sentence you started?

A. Twenty per cent of the collectible money or the money that was collected would be put in a fund to guarantee the payments to the Pine Supply Company.

Q. You mean Pine Supply Company?

A. No, I mean Twin City Company. Pardon

(Testimony of Pearl K. Lannin.)

me. And the trust agreement had not been drawn up at that time but they were talking what would be done in this office. So then I guess they drew it up a very short time because I said I wanted to take it to my attorneys to have them look over the trust agreement, which I did.

Q. You mean you took the trust agreement to your attorney?

A. Yes, when it was given to me.

Q. And your attorney was who?

A. Mr. Robidoux.

Q. What did you ask Mr. Robidoux to do?

A. Well, to go over the document and even to call on Mr. Pasquinelli or anything to see if it was all right for me to [387] sign this note and this trustee agreement.

Q. You mean to see if Mr. Robidoux thought it was all right?      A. Yes.

Q. In other words, you asked for his advice on whether to go through with this transaction or not?

A. That is right.

Q. Did he advise you about it?

A. Well, he gave me some advice.

Mr. Shapro: If your Honor please, if it is advice the witness is going to testify to, a conversation between herself and her own attorney, I object to it as self-serving.

Mr. Jacobs: No, I have not asked her.

Mr. Shapro: But she is about to testify to it. You asked her if he advised her.

Mr. Jacobs: That is all I am going to ask.

(Testimony of Pearl K. Lannin.)

Q. Then what happened after he advised you?

A. It ended up that I decided to sign the note, but previous to this—I don't know whether it is out of order or not—that he had told me about the use—when other sales were made—the Douglass Guardian Warehouse receipts.

The Court: The warehouse receipts?

The Witness: They were to be more or less a protection, and I told Mr. Robidoux about those. And so he did a little bit of investigating and it ended up that I signed the note and the trustee.

Q. (By Mr. Jacobs): Did you sign them both at the same time?

A. That I am not sure of. I know I signed the note up in Mr. Robidoux's office.

Q. In Mr. Robidoux's office? A. Yes.

Q. Was the trust agreement there at the same time?

A. Well, I know I took one up for him to look at, so I must have signed it up there. To be absolutely frank I can't recall just where I signed the trust agreement.

Q. Can you give us your best recollection as to whether you signed it in Mr. Robidoux's office or in your own house?

A. I think it must have been at home because I remember definitely the note being signed in Mr. Robidoux's office.

Q. Where was the note at the time when you signed the trust agreement? Did you have it?

A. I think I left it with Mr. Robidoux.



(Testimony of Pearl K. Lannin.)

Q. Did you read over the trust agreement? I assume you did, having signed it, is that right?

A. Yes.

Q. That is, you read it over before you signed it and then what did you do with it after you had signed it?

A. I know that Mr. Elliff—well, I kept a copy.

Q. You had one copy?

A. Yes, I kept one copy of it. [389]

Q. Did you have more than one copy? You signed more than one copy of it, did you not?

A. Yes, and I think Mr.—I guess Mr. Elliff must have taken it. I didn't keep it.

Q. Isn't it a fact that there were three copies of that document signed? Do you remember?

A. There may have been.

Q. What happened to the other two after you signed them?

A. Mr. Elliff must have taken them because I kept only one copy.

Q. Both of them. That is what I wanted to bring out. Do you recall the date on which you signed this note and the trust agreement or dates on which you signed them?

A. It was the first week in October. One of them is dated the 6th and one the 8th, but I didn't even notice. Maybe down where we signed them was the date we signed them. I don't recall. I can't recall the exact date, no.

Q. Are you able to tell us with certainty whether Mr. Elliff obtained the note, the signed note from

(Testimony of Pearl K. Lannin.)

you or did not obtain the signed note from you at the time when he obtained these two copies, these two signed copies of the trust agreement?

Mr. Shapro: If your Honor please, I object to the question on the ground it is incompetent. Secondly, it assumes a fact not in evidence. The witness has already [390] testified she left the note with Mr. Robidoux.

Mr. Jacobs: No.

Mr. Shapro: That is what she said.

The Witness: Yes, I am quite sure I did. Now, I wouldn't be positive whether I left it with him there or not, but I know eventually I turned it over to him. I don't know if this is out of order or not. This is a new experience for me. I am trying to rack my brain as to whether I kept them and turned it over when these bankruptcy proceedings started or not, but eventually I turned it over to Mr. Robidoux.

Q. Eventually you turned it over to Mr. Robidoux. Have you told us all of the investigation that you made into Mr. Elliff's affairs or into Pine Supply Company affairs before you signed these documents.

A. I didn't get the very first of your question.

Q. Have you told us the entire investigation that you made or caused to be made before you signed these documents, the note, that is to say, and the trust agreement?

A. Well, I didn't make much investigation because I knew some of the affairs and I thought

(Testimony of Pearl K. Lannin.)

from the outlook of what I had seen at the company that things were going along very nicely until he needed more money, and this was going to provide him with enough to keep going.

Q. Was Mr. Elliff indebted to you at this time?

A. Yes. [391]

Q. In what amount altogether?

A. That was in October, 1953.

Q. This was in October, 1953, the early part of it.

A. I have a note here that might be—I don't recall offhand. A little over \$13,000.00.

Q. A little over \$13,000.00?

A. That is right.

Q. How long had he been in your debt?

A. Since about 1947.

Q. Continuously?

A. Off and on. At one time it was down to where it was only a few thousand dollars.

Q. Are you telling us that he had been owing you money continuously, some money continuously from 1947 up to this date? A. Yes.

Q. How long had he been your son-in-law?

A. I think they were married in 1947, 1946 or 1947.

Mr. Jacobs: Take the witness.

### Cross Examination

Q. (By Mr. Shapro): Mrs. Lannin, did you ever meet Mr. Ramsay? A. No, not until——

Q. Not until this Court hearing?

(Testimony of Pearl K. Lannin.)

A. That is right. [392]

Q. You first met Mr. Hunter sometime in August, 1954, is that right?      A. That is right.

Q. After a visit from Mr. Hunter to your home you paid in two installments a thousand dollars each on account of this \$28,000.00 note, did you not?

A. That is right.

Q. Did you ever meet Mr. Collins?      A. No.

Q. Of the Twin City Lumber Company?

A. No.

Mr. Shapro: No further questions.

Mr. Robert Jacobs: One question, Mrs. Lannin.

### Redirect Examination

Q. (By Mr. Robert Jacobs): Mrs. Lannin, was a demand ever made upon you by anyone for the payment of any sum in connection with the note that we have been discussing in this case?

A. Yes, by Mr. Hunter.

Q. When was that demand made?

A. It must have been August. He phoned me sometime. In August he came to my home and I think he phoned me after that once.

Q. Did you ever receive any communications by mail in regard to collections, a demand in this case for the note?

A. I don't believe I ever—if I did, I turned it over to [393] Mr. Robidoux, but I can't recall a letter. I recall of a telephone and at my home.

Q. Merely to refresh your memory, Mrs. Lannin, I will show you a letter, a copy of a letter

(Testimony of Pearl K. Lannin.)

which purported to be on Twin City Lumber Company stationery, and in which there is a reference to a demand for payment of \$19,506.20, and ask you if you ever received the original of that letter.

A. I don't recall ever seeing this.

Q. You do not recall ever seeing this?

A. There is something I can add.

The Court: Let us go on with this. Finish that subject. Is there any question about it?

Mr. Shapro: There is no question but that the original of which that letter is a copy was sent by Twin City Lumber Company at our request. It was dictated by my Associate, Mr. Aronson. Do you want the date? Because that is undated. We can give you the date.

Mr. Aronson: A date subsequent to October 21st, 1954.

Mr. Shapro: After October 21st, 1954.

Mr. Robert Jacobs: With the permission of counsel I offer this in evidence.

Mr. Shapro: No objection.

The Court: It may be marked Exhibit 16.

Mr. Robert Jacobs: I think it would be more properly marked as cross-complainant's Exhibit 1.

Mr. Shapro: Lannin Exhibit.

The Court: All right, Lannin Exhibit 1.

Mr. Huntington Jacobs: L-1.

The Court: Lannin Exhibit 1.

(The document referred to was thereupon received in evidence and marked "Lannin Exhibit 1.")



(Testimony of Pearl K. Lannin.)

The Court: Are you introducing it?

Mr. Robert Jacobs: Yes.

The Court: You want to do anything further about it with this witness?

Mr. Robert Jacobs: No.

Mr. Huntington Jacobs: Wait a minute. Do you want to get at the fact that she paid these two?

Q. (By Mr. Robert Jacobs): Were there any sums paid by you on this obligation, Mrs. Lannin?

A. Yes, there were two.

The Court: She has already testified to those.

Mr. Shapro: Two one thousand dollar payments.

Mr. Jacobs: Two one thousand dollar payments.

The Court: Made after August.

Mr. Shapro: 1954.

Mr. Robert Jacobs: They are evident on Plaintiff's Exhibit 14, your Honor. That is all.

Mr. Shapro: No further questions.

Mr. Huntington Jacobs: We are making better [395] progress than I had anticipated, your Honor, when I told your Honor that we were going to occupy the entire afternoon. There remains of our case the testimony of one witness that I would like to call at our next session, whatever your Honor decides, and the testimony of Mr. Baum, who has already been told, in accordance with your Honor's instructions, that he was to return and bring those documents to complete his cross examination.

The Court: To identify the book.

Mr. Shapro: I want him back for cross but not for the documents.

The Court: You will so inform him.

Mr. Huntington Jacobs: Yes, I will so inform him immediately at the conclusion of this session or at the earliest recess. We haven't in Court at the present time anything further with which to proceed.

Mr. Shapro: Pardon the interruption, but so there may be no misunderstanding—I am not attempting to be facetious—apparently Mr. Baum inadvertently took one of the Exhibits with him. He may have done it unintentionally, but I want to be sure he is instructed to bring back that letter that he took with him.

Mr. Huntington Jacobs: I have already assured counsel I will make that my personal concern. I think it is our Exhibit C, your Honor. [396]

The Court: For Identification.

Mr. Jacobs: Yes.

The Court: We will adjourn until Monday next.

(Thereupon an adjournment was taken until 10:00 o'clock a.m. of Monday, November 28, 1955.) [397]

Monday, November 28, 1955

10:00 A.M.

JOSEPH N. BAUM

recalled, previously sworn.

Redirect Examination

Q. (By Mr. Shapro): Mr. Baum, I think just

(Testimony of Joseph N. Baum.)

shortly before we closed the last session at which you testified, in response to one of my questions, you looked through the book which has been marked Defendant's Exhibit C for identification, I think. It might have been the other one, but we'll get to it.

In other words, what you testified to, if I recall your testimony correctly, was that during the months of October, November, and December of 1953, Mr. Elliff withdrew approximately \$1900.00, a total of approximately \$1900.00 for himself, is that right? A. Well, I can check the books.

Q. Do you want to check it again, please?

A. That is correct.

Q. That is approximately right? A. Yes.

Q. Now, Mr. Baum, earlier in your testimony in response to one of the Court's questions, you testified, if I remember correctly, that during the period of the trusteeship of Mr. Pasquinelli, namely, from October, let's say, 6th, 1953, to March 24, 1954, whereas Mr. Elliff was under the trust [399] agreement entitled to draw \$400.00 per month; that he had withdrawn, according to your testimony, as I recall it, a total of only \$1400.00. Will you check that, please?

A. That is correct, Mr. Shapro. I remember.

Q. That is correct?

The Court: That is from October '53——

Mr. Shapro: To March, 1954.

Q. How do you reconcile the two that he withdrew in the last three months of 1953, whereas he

(Testimony of Joseph N. Baum.)

drew only \$1400.00, almost, in the six month period involved?

A. Mr. Shapro, I would have to check some of the entries in the books, because I remembered the information I gave you. But the \$1900.00 was picked just out of—the debits in his drawing account, without offsetting any possible entries that might have corrected it.

Q. Well, now, what we want, Mr. Baum, and I am sure the Court wants it, and I know I want it, is the facts from the records as to how much money Mr. Elliff withdrew from the business during the period of October 8, 1953, to March 24, 1954.

A. All right. Now, if I—can I explain that answer that I gave, Mr. Shapro, because I found part of it?

Q. Yes, sure.

A. Prior to the time that the trustee bank account was set up—in other words, when I testified to the fact, they [400] had Mr. Pasquinelli's records as trustee, I testified that there was approximately \$1400.00 that Mr. Elliff withdrew from the period of time that Mr. Pasquinelli was administering the trust funds under the trust agreements.

Now, I find here that there were prior to that—in other words, from a bank account which was closed out, approximately about the time that the trust agreement went into effect, Mr. Elliff had drawn over the period of approximately two weeks or so, some \$360.48, which had nothing to do with the administration of the trust funds.

(Testimony of Joseph N. Baum.)

Then there is another entry something like that which would explain the difference.

Q. Then is it your testimony, Mr. Baum, that during the period from October 8, 1953, and up to March 24, 1954, that from all sources connected with the business—by all sources, I mean either from the trust funds administered by Mr. Pasquinelli, or from the business' own funds, that the total amount of withdrawals of Mr. Elliff was approximately \$1900.00?

A. Can I check another entry, Mr. Shapro?

Q. Surely.

A. No. After checking these journal entries, my answer would have to be amended or corrected, Mr. Shapro.

Q. Will you give us the correct figures?

A. The correct figure would be the 14—or approximately [401] \$1750.00. That resolves itself into the \$1400.00, or approximately \$1400.00, which I testified that he drew or that Mr. Pasquinelli paid him out of the funds which he administered, you know, as trustee.

And as I said, that other three hundred and some odd dollars which he had drawn out prior to the time that that trustee bank account was established, because there is a correcting entry in here for \$200.00.

Q. Then the other day when I was asking you to explain, if you could, the difference or the discrepancy between the December 31st, 1953, balance sheet, as to assets and liabilities, as compared with



(Testimony of Joseph N. Baum.)

your statement as to the business assets and liabilities of Elliff in October of '53, and you told me that one reason was—one of the reasons for the discrepancy would be Mr. Elliff's withdrawals.

In response to a subsequent question by me, you said his withdrawals for that three months period was \$1900.00.

Now, which was correct, what you say is \$1700.00?      A. Approximately \$1700.00.

The Court: Was it \$1,760.00 you gave me, \$1400.00 plus 360?

A. Well, if I can check further on my——

Mr. Shapro, did I hand over as an exhibit that accounting that I had made for Mr. Pasquinelli as trustee?

Mr. Shapro: No, sir. [402]

The Witness: I didn't?

Mr. Shapro: No, sir.

Q. Perhaps it will save a little time, maybe, if I get at it this way:

Is this your testimony, that after January 1st, 1954, Mr. Elliff drew no money for himself from this business?

A. Well, I will have to check the records, Mr. Shapro.

Q. Don't those records——

A. Oh, plus the one other, the trustee accounting by me.

Q. Will you check those, please?

Mr. Baum, Mr. Jacobs has suggested that you

(Testimony of Joseph N. Baum.)

look at this photostat of the Pasquinelli accounting. Perhaps that will——

A. That is right. Those were photostated from my work sheets.

After January 1st, 1954, Mr. Elliff drew the sum of \$300.00.

Q. Up to March 24th?

A. That's right, between January 1st and of the time that Mr. Pasquinelli closed his account out. In other words, Mr. Pasquinelli gave Mr. Elliff sums of money during the time that he administered the trust agreement amounting to \$1123.55. Mr. Elliff, in addition to that, drew the sum out of the business of other funds, which I said were not under the control of the trustee in the amount of \$360.48.

Q. That is after January 1st?

A. No. This was in 1953. It would be after the date of— [403] well, actually it's from the beginning of October to the time Mr. Pasquinelli started drawing the checks on the account, which was somewhere around the 13th or the 15th of October.

So that would make it roughly \$1423.55. \$1123.55 plus \$360.00 is roughly \$1490.00, and then \$300.00 more between——

Q. January 1st?

A. That's right, between January 1st and March of '54.

Mr. Shapro: No further questions.

The Court: Well, the total is—we have got a lot of figures and they are contradictory of each other. I would like to know what the definite answer is.

(Testimony of Joseph N. Baum.)

From the time of the trust agreement to March 24th, what is the figure that he drew?

A. \$1784.13.

Q. (By Mr. Shapro): One more question, then, Mr. Baum. How much did Mr. Elliff draw personally from the business after March 24th and up to the time of its closing in 1954?

A. Do you mind if I do a little adding and subtracting, Mr. Shapro?

Q. Do you have a piece of paper?

A. I have some in my pocket here, thank you.

Well, to the end of March towards March 30th, I will give the balance of his drawing account and then subtract the balance as of January 30th. [404]

Q. Well, except that might involve your explaining credits to the account.

In other words, was he credited with expenses to that account?

A. Well, as I say, those I would have to check back and look at some of the entries in here.

Q. Give it to me the way you just suggested.

A. There is a difference of roughly \$2600.00 between the drawings of the end of March and drawings at the end of—this entry is here, July.

Q. So in other words, according to your records, he drew approximately \$2600.00 from the business between—

A. March 31st.

Q. Between March 31st?

A. And the end of July.

Q. And the end of July, '54?

A. That is right.

(Testimony of Joseph N. Baum.)

Q. Would that figure include monies which might have been paid to him by Mrs. Barnhart as trustee?

A. Oh, yes, that would include all. This is his drawing account which should reflect all the sums given to him for his personal use.

Q. As far as you know, did it reflect all of the sums given to him for his personal use?

A. Well, if it was given—well, put it this way: If it [405] was given to him in the form of a check, it did.

Q. And you have no knowledge of any money being given to him in any other form, have you?

A. Not before the time of the filing of the petition in bankruptcy.

Mr. Shapro: That is the only time we are concerned with. I have no further questions.

#### Recross Examination

Q. (By Mr. Robert Jacobs): Mr. Baum, there have been references in the testimony in this case to a tape that was taken during a meeting with Mr. Ramsay, yourself, and Mr. Elliff in late September, '53. Do you have any knowledge as to what happened to that tape?

A. There were several tapes taken, Mr. Jacobs, and also some accountants' work sheets that were prepared. I am almost positive Mr. Ramsay took them with him.

Mr. Robert Jacobs: Do you have them?

Mr. Shapro: No such items.

(Testimony of Joseph N. Baum.)

Q. (By Mr. Jacobs): How many times was Mr. Ramsay present in San Jose at the business of Pine Supply Company during the latter part of September at which times you were also present?

A. I know that he was there on more than one occasion, Mr. Jacobs, but I couldn't definitely say just how many times he was there.

Q. Was it several? [406]

A. I would say it was several.

Q. Were these meetings held at the Pine Supply Company?

A. Well, as I say, the one meeting—or two meetings that I testified to, one was in Pine Supply offices of the Pine Supply Company and another one was over at the Hester Branch of the Bank of America.

I know that Mr. Ramsay was down there more times than that, and that usually at one time or another I am pretty sure that he was over at the Pine Supply warehouse.

Q. Now, on the meeting which you have referred to in your previous testimony as taking place, I believe, in the evening, and during which time you and Mr. Ramsay went over the books, was there an aging of the accounts?

A. There was. The accounts, what they did was actually pull out the physical invoices that were unpaid at that time, invoices to Mr. Elliff's customers.

And I remember distinctly that they were aged on a series of 14-column accountant's work sheets.

Q. Can you explain——



(Testimony of Joseph N. Baum.)

A. It would be something, the same type of a sheet that this material here was photostated from.

Q. Can you explain how that would be done and how that was done?

A. If I remember correctly, what they did was put the—and I do not remember whether someone called the figures and [407] the names off to me and I wrote them down, or whether I called them to somebody else and they were written down, but I do know that the customers' names were written down on one of these accountant's work sheets.

The total amount of the invoice was put in one column adjacent to the customer's name, and then in a series of columns to the right, the amounts of that particular invoice or the amounts of balances would be put down as to whether they were current, 30 to 60 days old; I think it was either current, 30 to 60, 60 to 90, and over that.

Now, that is as well as I can remember what happened.

Q. Do you have any recollection as to what proportion of Mr. Elliff's accounts fit in each category?

A. I'd only be a hazarding a guess, Mr. Jacobs. At that time, I think that better than 50 per cent—

Mr. Shapro: If your Honor please, if it is a guess, I move to strike it as a conclusion.

Q. (By Mr. Jacobs): Give us your best recollection as to what the accounts were at that period of time, Mr. Baum.

(Testimony of Joseph N. Baum.)

A. I would say that better than half of them were current.

Mr. Jacobs: Do you have those accounts receivable, Mr. Shapro?

Mr. Shapro: No, we don't have them.

Q. (By Mr. Jacobs): What proportion would be other than current? You say better than half. How much less than half [408] would be other than current?

A. Oh, possibly somewheres in the neighborhood of 40 per cent.

Q. And of that 40 per cent what proportion would be over 30 days and less than 60 days, or over 60 days and——

A. I couldn't truthfully answer that, Mr. Jacobs. I don't know.

Q. How long have you been a C.P.A., Mr. Baum? A. Almost six years.

Q. And how long have you been an accountant?

A. Since perhaps 20 years.

Q. You also testified that you were in the lumber business for some time, did you not, Mr. Baum?

A. That's right.

Q. And how long were you in the lumber business? A. Approximately two years.

Q. Can you give an opinion, Mr. Baum, as to what the value of accounts would be in the type of business that Mr. Elliff was running that were over 30 days?

Mr. Shapro: If your Honor please, I am going to object to that on the ground it calls for the

(Testimony of Joseph N. Baum.)

opinion and conclusion of the witness and no proper foundation has been laid.

After all, the witness has testified he can't even remember what proportion, or rather, what the amount or relative proportion would be. He says he has been in the lumber business for two years. We take that for what it's worth, [409] and he is an accountant, a C.P.A., for six years. The evaluation of an account or a series of accounts, your Honor, is a matter for an expert in the credit department, not an accountant.

Mr. Jacobs: I believe Mr. Baum is qualified to answer that question, your Honor, in light of the fact that he has been an accountant and he has been a C.P.A. and he has personal knowledge of the running of the lumber business and the accounts therein.

The Court: Counsel, doesn't it involve a credit standing of the customers of the company? This witness has not been qualified to give an opinion as to that.

Q. (By Mr. Jacobs): Mr. Baum, how long had you been the accountant for Mr. Elliff in the business of the Pine Supply Company prior to September of 1953, the end of September?

A. Approximately three months.

Q. Had you had an opportunity to examine his accounts and how they were paid? A. I did.

Q. Did you have knowledge of which accounts were paid on time and which accounts were delinquent for any period of time?

(Testimony of Joseph N. Baum.)

A. Some of them, yes.

Q. Did you make any examination of the credit standing of the people who had accounts with Mr. Elliff? [410]

A. No, I did not.

Mr. Jacobs: Is that qualifying him sufficiently, your Honor? I believe it does. He stated he was the accountant for Mr. Elliff for three months, that he had knowledge of Mr. Elliff's accounts, when they were paid and how they were paid.

Mr. Shapro: He also testified he made no investigation as to the credit standing of the individuals.

Mr. Jacobs: I might also point out, your Honor, that the witness prepared the reserve for bad debts which is in evidence in the December 31st balance sheet and it shows a total reserve of \$1800.00.

The Court: Well, there is nothing pending, no question pending now, counsel. If you desire to ask a question and an objection is made to it, I will then rule on it.

Q. (Mr. Jacobs): Mr. Baum, could you give us your opinion of the accounts of Mr. Elliff which were over thirty days old as to their proportionate value in being paid?

Mr. Shapro: To which question we object, if your Honor please, upon the ground that no proper foundation has been laid. It calls for the opinion and conclusion of the witness.

The Court: I think the objection should be sustained, counsel.

Q. (By Mr. Jacobs): When you were present

(Testimony of Joseph N. Baum.)

during the meetings with Mr. Ramsay and Mr. Elliff in the latter part of September of 1953, did Mr. Ramsay ever in your presence ask about [411] the personal financial condition of Mr. Elliff?

A. Not to my recollection.

Q. During these meetings just referred to, did Mr. Ramsay make any request as to information which he desired relative to the financial condition of the Pine Supply Company? A. Yes, he did.

Q. At any time in your presence were any of these requests refused?

A. Not to my knowledge.

Q. Did Mr. Ramsay ever ask you what Mr. Elliff's personal financial condition was?

A. No, he did not.

Q. You testified prior to this time to the meeting which was held in Mr. O'Connor's office some time around October 6th, 1953, and I believe you testified that there was a discussion of the trust agreement. Was there any discussion at that time as to who was to be the trustee, the trust agreement trustee?

A. Well, Mr. Jacobs, if I remember correctly I testified that we went into Mr. O'Connor's office to have the note of \$28,000.00 prepared. There was some discussion about that. But I am pretty sure that I testified to the fact that when we started—just commenced to talk about the trust agreement, it was a very brief conversation because Mr. O'Connor told us that he wasn't conversant with all of Mr. Elliff's financial [412] transactions, and that we



(Testimony of Joseph N. Baum.)

had best wait and see Mr. Pasquinelli about that. So there wasn't very much said at that time about the trust agreement.

Q. Who began the conversation?

The Court: You didn't answer the question, Mr. Baum, which was originally asked you. That is where we have difficulty where witnesses don't answer questions. The question was, was there any discussion as to who was to be the trustee?

The Witness: No.

Q. (By Mr. Jacobs): Who began the discussion, to the best of your recollection, at that meeting relative to the trust agreement?

A. I don't remember, Mr. Jacobs.

Q. At the meeting with Mr. Pasquinelli a few days later at which you were present, was there a discussion of the terms of the note?

A. Mr. Jacobs, there was a discussion about the terms of the note. But frankly, I don't remember whether it was in front of Mr. O'Connor or in front of Mr. Pasquinelli. I am pretty sure it was not in front of Mr. Pasquinelli.

Q. To the best of your recollection, were the amounts of the payments settled at the meeting with Mr. O'Connor on this note?

A. I am not sure, Mr. Jacobs, but I think so.

Q. You testified the other day regarding some notices of protest which you thought you had in your file in regard to checks made by Mr. Elliff to Twin City Lumber Company prior to the October transaction?

(Testimony of Joseph N. Baum.)

A. That is correct, Mr. Jacobs.

Q. Have you found those notices of protest?

A. Yes, I have. There are six of them in all. Three of them concern the checks which I had testified to were to my knowledge ever returned, that were part of the consideration in this October arrangement. The other three or four checks which had nothing to do with that arrangement whatsoever.

Q. And those last three that you referred to?

A. I have them arranged here in order of date.

Mr. Jacobs: We would like to offer these in evidence, if your Honor please, as trustee's next in order.

The Court: Exhibit 16.

(Thereupon the foregoing notices of protest were introduced into evidence as Exhibit 16.)

Q. (By Mr. Jacobs): To the best of your recollection is that the total of the protests that were made?

A. I could not be sure, Mr. Jacobs. I went through the records as fast as I could. But they have been gone through so many times previous to this that anything could have happened to any more of those notes had they been present at one time or another. [414]

Q. You testified that after the October transaction and up until December 31st, 1953, you continued on as the accountant for Mr. Elliff's business?

A. That is correct.

Q. During that period of time, were there any

(Testimony of Joseph N. Baum.)

other purchases made from suppliers other than Twin City by Pine Supply Company?

A. Yes, there were.

Q. Can you estimate how much in money was purchased from other suppliers during that period of time by Mr. Elliff?

A. I could try to testify from the records, Mr. Jacobs.

Q. Have you found the invoices that cover those purchases?

A. I have some of them here, but not all; approximately \$12,271.00.

Q. That covers the dates——

A. October, November and December of 1953. I might amend that answer. \$13,121.00.

Q. That is up until December 31st, 1953?

A. That is correct.

Q. Have all of these purchases been paid for to the best of your knowledge?

A. No, I do not believe they have.

Q. How much of this \$13,100.00 has been paid for? A. Oh, I would not be able to say.

Mr. Jacobs: I think that is all. [415]

#### Further Redirect Examination

Q. (By Mr. Huntington Jacobs): I have one or two questions on redirect examination. Did you say that you had certain invoices covering some of these purchases you have just referred to?

A. Yes, I did.

Q. Do you have them with you here?

(Testimony of Joseph N. Baum.)

A. Well, I have to check them over, Mr. Jacobs. Here is one of them from the Durable Plywood Sales Company dated October 31st, 1953.

Q. Any more?

A. I have to look through this file. Yes. Here's another one from the Harbor Lumber Company dated November 5th, 1953.

Q. Any others?

A. I think those are the only ones I brought with me, Mr. Jacobs.

Q. You have shown me two groups of invoices, one rendered by the Durable Plywood Sales Company under date of October 31st, 1953, and another rendered by Harbor Lumber Company, Inc., under date of November 5th, 1953.

Now I understood you to say that these were invoices rendered on purchases from other suppliers than Twin City Company after October, 1953 and before the end of that year.

A. That is correct.

Mr. Jacobs: For illustration now we will offer these [416] two invoices, your Honor, as the trustee's next in order.

The Court: As one Exhibit?

Mr. Jacobs: Yes.

The Court: Trustee's Exhibit 17 in evidence.

(Thereupon the foregoing documents were introduced as Plaintiff's No. 17 in evidence.)

Q. (By Mr. Jacobs): Now, Mr. Baum, am I correct in understanding you to say on your cross examination that the \$13,121.00 figure you have just given to Mr. Robert Jacobs was the aggregate or

(Testimony of Joseph N. Baum.)

approximate aggregate of the purchases during the month of November and December, 1953, from other suppliers than Twin City Company?

A. No, he—you asked me—I think I was asked total purchases. I would have to check and see whether that included anything from Twin City or not.

Q. I wanted to find out whether they included the Twin City purchase in November and whether they did not.

A. That included, that figure included purchases from Twin City Lumber Company also.

Q. It did?

The Court: Was the \$13,000.00 included?

The Witness: Yes, sir.

The Court: That isn't what you testified, Mr. Baum.

Mr. Jacobs: I didn't understand him to say——

The Witness: I understood the question was, what was the [417] purchases during that period of time. The purchases from Twin City that were included were approximately \$4800.00.

The Court: Then the answer is, the difference is \$13,000.00 less \$4800.00?

The Witness: Yes, sir.

Q. (By Mr. Jacobs): Mr. Baum, have you searched the records of the estate thoroughly—I will withdraw the thoroughly—have you made a search of the records of the estate to attempt to find this accounts receivable sheet that you referred to?

A. I did.



(Testimony of Joseph N. Baum.)

Q. And did you find it or any indication of what had happened to it? A. No, sir.

Q. And is it your testimony the same is true regarding these papers that have been mentioned?

A. No record of the tapes in the files, either.

Q. What did you say was your recollection regarding what happened to the accounts receivable sheet?

A. To the best of my knowledge, I think Mr. Ramsay took those broad worksheets with him. I know I didn't take them and I know Mr. Elliff did not keep them.

Mr. Jacobs: I think that is all.

Mr. Shapro: No further questions.

The Court: That is all.

(Witness excused.) [418]

Mr. Shapro: May we have that one ledger remain here now, your Honor? This is the one that was marked for identification.

The Court: Yes.

Mr. Huntington Jacobs: If your Honor please, I had hoped to have present here this morning two certified copies for which I have asked the Referee, one of his lists of claims filed and the other is a transcript of his calendar notes regarding the proceedings before him in this Elliff case, and which I intended to tell your Honor the particular proceedings that pertained to the defense of the adverse claim of Mrs. Lannin. This has reference—this latter exhibit will have reference to the fourth count of the complaint. I am confronted with the

necessity of giving brief testimony myself regarding the work that was done, according to my recollection, in the defense of the Lannin claim and in the investigation of the substance of that claim which is mentioned in the trustee's complaint. So I will ask to be sworn.

### C. HUNTINGTON JACOBS

volunteered as a witness, sworn.

Mr. Shapro: Your Honor, at this time on behalf of the Twin City Lumber Company we move to exclude all or any of the testimony in support of the fourth *complaint* of this complaint on the ground that the fourth count does not state counts against the defendants or any of them. [419]

If your Honor will examine the fourth count you will find that it purports to charge the defendant——

The Court: Mr. Shapro, you have made your position. I think it will be quicker to take this testimony and then present whatever arguments you have in reference to it at the same time.

Mr. C. Huntington Jacobs: The testimony will take about five minutes, your Honor.

The Court: All right.

Mr. C. Huntington Jacobs: My name is C. Huntington Jacobs. I am a member of the State Bar of California and was a member during all of the times to which I shall refer in my testimony. I have been since 1921. I am the attorney for Ralph Williams, the trustee in bankruptcy of the estate of George F. Elliff.

(Testimony of C. Huntington Jacobs.)

In September I was also the attorney for the Receiver in bankruptcy of the same estate prior to the classification of the trustee. In September of 1954.

I obtained from the Referee in bankruptcy, J. Abrott, to whom that case had been referred, an order to show cause which directed Mrs. Lannin to show cause why any of the property of the bankrupt in her hands should not be administered upon as a part of the estate. That was the substance of the order applying to her. That was duly served and Mrs. Lannin answered setting up the trust agreement that is in [420] evidence in this case and laying claim to the entire stock in trade of the bankrupt alleging that she had had warehouse receipts covering the entire stock in trade.

That order to show cause was obtained by the Receiver and proceedings upon it were prosecuted by the trustee upon his qualification.

The trustee obtained a stipulation of Mrs. Lannin and other claimants to the same stock in trade whereby the stock in trade was duly sold and the bankruptcy proceeding and the proceeds were substituted for the merchandise.

That sale was made by the trustee and realized the sum of \$7,000.00 which was the highest bid. The sale was confirmed by the Referee, from the entire stock in trade that was on hand at the time of the sale and that included the entire stock in trade that had been on hand at the time of the bankruptcy, with some minor exceptions, I understand.

(Testimony of C. Huntington Jacobs.)

Proceedings respecting Mrs. Lannin's claim were interspersed with hearings upon the other adverse claims to this same stock in trade and extended over a considerable period in consequence of that.

There were some ten different hearings, variously, in Oakland and San Jose, most of them in San Jose. My office is in San Francisco and I have an office in Redwood City also from which I mainly handled this case.

The investigation that was made of the basis of her claim [421] included general examinations under 21-A, some five of them, which were variously had in San Jose and Oakland and one in Los Angeles.

I had instituted and did ancillary proceedings in Los Angeles for the purpose of taking the testimony there of Mr. Hunter and of Mrs. Swanson, both of them connected with the defendants.

The matter was submitted for decision, the matter of the Lannin claim was submitted for decision in November of 1954. It was eventually passed upon as I recall it in April of this current year.

The examinations in Los Angeles took place shortly after the submission. They did not develop anything that required reopening the case, at least in my opinion or that of my adversary, Mr. Robert Jacobs, who represented Mrs. Lannin at all these proceedings.

The amount of time that I devoted to the case would amount to approximately 12 full eight hour days. I think that is a conservative statement of it.

(Testimony of C. Huntington Jacobs.)

The amount of expense incurred by the estate aggregated approximately \$370.00, as I recall it.

The case included an application by Mr. Jacobs, Mr. Robert Jacobs, for the joinder of Twin City, as additional party respondent. The trustee supported that position and an order was made which provisionally joined Twin City Company [422] subject to the right of Twin City Company to object to the summary jurisdiction.

The objection was made by Twin City Company later and Mr. Robert Jacobs filed a memorandum opposing the motion. I also filed a memorandum of opposing it on behalf of the trustee.

However, the motion was granted and the Twin City Company was dismissed from the summary proceeding.

Mr. Shapro, I believe you have a copy of the order dismissing Twin City?

Mr. Shapro: I do.

Mr. Jacobs: We will offer this order which is produced by Mr. Shapro. It is a certified copy of the order of dismissal.

(Thereupon the foregoing certified copy of order was introduced as Plaintiff's Exhibit No. 18.)

Mr. Jacobs: I found a memorandum on behalf of the trustee at the conclusion of that case, summaries to voluminous testimony that had been taken in it and the law that I considered was applicable to it.

The memorandum was approximately 21 pages



(Testimony of C. Huntington Jacobs.)

long and I cut it down from a much longer one. The matter appeared to me at least to be somewhat complicated.

I think that completes my testimony unless there is cross examination. [423]

### Cross Examination

Q. (By Mr. Shapro): Just a couple of questions, Mr. Jacobs. The time that you have estimated that you put in in connection with this summary proceeding and the response to which the estate was put in connection with those proceedings, I take it, refers to the hearings and includes the investigation and expenses on the hearings, to determine adverse claims other than those of Mrs. Lannin?

A. No, Mr. Shapro. I tried to confine myself to the time spent in investigating and in opposing the Lannin claim. I will say this. It does include the investigation of the whole Elliff account because that appeared to me to be pertinent to the question of insolvency.

Q. Actually, as a result of the decision of the Referee, which is embodied in the last Exhibit introduced, the certified copy of the order of January 1955, with the exception of the proceedings leading up to that order, Twin City Lumber Company was not a party before the Referee in connection with those proceedings, is that right?

A. No, that is true. That is true. My client tried to do that and he was successful in presenting it.

(Testimony of C. Huntington Jacobs.)

Q. Tell me, to your knowledge has Twin City Lumber Company filed any complaint in the bankruptcy proceedings?

A. No, I think they have not, Mr. Shapro.

Q. The time for filing claims against the bankruptcy estate [424] of Elliff has expired?

A. The time for filing claims on parity with the claims originally claimed has expired, of course, as you know.

They can still file a claim.

The Court: When did the time expire?

The Witness: It expired six months after the date of the first meeting, if your Honor please. The original date—the original date set was October 1st, if I am not mistaken.

The Court: October 1st, '54?

Mr. Shapro: '54.

Mr. Jacobs: That is right.

Q. (By Mr. Shapro): The original time for filing claims under Section 57 M of the bankruptcy act would have expired April 1st of '55. The qualification that counsel refers to is in connection with litigated matters and the statute speaks for itself on that. There are exceptions.

Mr. Jacobs: Yes, yes. But no proof of claim has been filed according to my latest inspection of the record. I am producing a certified copy of the Referee's list of claims that have been filed, your Honor.

Now I ought to add, if I may, my estimate of

(Testimony of C. Huntington Jacobs.)

the value of services, I suppose. The Court is much better qualified than I am to appraise them.

But I think that a moderate estimate of the reasonable value—that is not saying the Referee will agree with me, [425] he will have to manage the allowance, I haven't received anything as yet—I believe a moderate estimate of the value of the services rendered in opposing the Lannin claim and obtaining the order denying it would be \$1500.00, and I refer merely to services.

Mr. Shapro: Well——

Mr. Jacobs: Now, if your Honor please, subject to the production of those two certified copies that I have already referred to, the plaintiff can rest.

I believe that I shall have them here by 3:00 o'clock. That is the last word I got from Judge Abrott's office this morning.

The Court: By when?

Mr. Jacobs: 3:00.

The Court: 3:00?

Mr. Jacobs: I understand so. But that would complete the case for the trustee.

Mr. Shapro: The defendants will proceed, your Honor, subject of course to the motion to exclude evidence that we made with respect to this fourth count.

If it please the Court, may we have the morning recess now?

The Court: All right.

(Recess.) [426]

Mr. Shapro: Your Honor, Mr. Robert Jacobs has suggested that he conclude as cross complainant before we put on the defense. If that is satisfactory with the Court we are agreeable, your Honor.

The Court: All right.

Mr. Robert Jacobs: Mrs. Lannin, will you take the stand please?

The Court: The witness has been sworn.

MRS. PEARL K. LANNIN

called as a witness, previously sworn.

Direct Examination

Q. (By Mr. Robert Jacobs): Mrs. Lannin, will you tell the Court when you first came to the conclusion that the transaction that took place in October of 1953, involving the note, the guarantee, the trust agreement, and the transfer of stock in trade, was of a fraudulent character?

Mr. Shapro: To which question we object, if your Honor please, upon the ground it is argumentative and calls for the opinion and conclusion of the witness.

Mr. Jacobs: If it please the Court, part of the pleadings in this case sets forth that Mrs. Lannin was not aware of the nature of the transaction until a certain period of time; that did subsequently became aware. This question is merely aimed at showing that part of the pleadings.

The Court: Is there any question of the statute? [427]

(Testimony of Mrs. Pearl K. Lannin.)

Mr. Shapro: No, not the statute.

The Court: Statute of Limitations. How is it material then, counsel?

Mr. Jacobs: The question of the knowledge of Mrs. Lannin may be material, your Honor, in that she is requesting relief from Twin City, affirmative relief.

The question of her good or bad faith therefore becomes a question that must be decided by this Court. Her knowledge, of course, is an essential element of good or bad faith.

The Court: I think the basis of such claim she may have would be upon the facts that she can develop and not upon her conclusions that the thing was fraudulent.

Mr. Jacobs: This question, your Honor, is merely as to time, when in time.

The Court: But there is no question of statute involved, so that question doesn't make any difference, does it?

Mr. Jacobs: I sincerely——

The Court: I mean, nobody is charging her with——

Mr. Jacobs: No. As I stated to the Court before, her good faith is certainly an element that must be shown in order for Mrs. Lannin to get any affirmative relief from Twin City Lumber Company.

The Court: Is there any contention that she——

Mr. Jacobs: To that part of the pleading which mentioned her knowledge, there was a denial, a lack of information and [428] belief, your Honor. There-



(Testimony of Mrs. Pearl K. Lannin.)

fore, it is our contention that we should show when her knowledge was arrived at.

Mr. Shapro: The mere fact that it pleaded and denied doesn't mean that it is material, your Honor.

As far as we are concerned, we submit that the time when she learned for the first time that this transaction was something of which she could complain is immaterial. The point is can she complain of it?

Those are the facts that she is bound to produce.

The Court: I am inclined to think the objection is good, counsel. The objection may be sustained.

Q. (By Mr. Robert Jacobs): Mrs. Lannin, did you attend the hearings which took place regarding the bankruptcy proceeding against George Elliff?

A. I attended those in San Jose.

Q. You attended those in San Jose. And at those hearings, did you listen to the evidence which was presented by the trustee in bankruptcy in regard to the transaction which we have been discussing in this trial? A. Yes.

Q. Was that the first time that you were aware, Mrs. Lannin, of the facts surrounding this transaction?

Mr. Shapro: That is the same question, your Honor, to which we make the same objection. It is incompetent, irrelevant, immaterial and calls for the conclusion of the [429] witness.

The Court: She has already testified as to some facts that she was aware of way back in October of '53.

(Testimony of Mrs. Pearl K. Lannin.)

Mr. Jacobs: That is exactly when this is pointed to, from October on until the hearings on this matter, your Honor, she was aware of some of the facts of October, and further facts she became aware of during the hearings in this matter.

The Court: Well, this question however, she couldn't answer the question because she has heard of facts and has testified to them as to what she learned in October 1953.

Now if you want to show that she had no conversation with anybody between October 1953 and the time of this hearing about this matter, why, I will permit you to show that, if that is what you want to do.

Q. (By Mr. Jacobs): Did you have any conversation, Mrs. Lannin, in October of '53 or thereabouts with anyone representing Twin City Lumber Company?

A. I don't believe—no, I am not positive.

Q. Did you discuss with anyone representing Twin City Lumber Company the note and trust agreement prior to the hearings on the Lannin adverse claim?

Mr. Shapro: I object to that question if your Honor please upon the grounds it assumes a fact not in evidence, namely that she talked to anybody about the trust agreement, [430] both with respect to the note and the trust agreement. The witness' testimony, your Honor, previously is that she talked about the note to Mr. Hunter.

The Court: I take it it is preliminary. If the

(Testimony of Mrs. Pearl K. Lannin.)

answer is yes then we can find out what the conversation was.

Q. Was that 1953—read the question.

(Question read.)

The Witness: Would that be in 1953?

Mr. Jacobs: That would be the hearings on the Lannin adverse claim, to refresh your recollection, Mrs. Lannin, were during September and November of 1954.

A. I talked to Mr. Hunter previous to that, yes. But I misunderstood the year.

The Court: You talked to Mr. Hunter; I take it you testified in August of '54 when he was requesting some payments to be made on the note, is that correct?

The Witness: Yes, that is right.

The Court: Now from the time of October 1953 to October 1954—to August '54, when you talked to Mr. Hunter, did you talk to anyone in connection with Twin City Lumber Company concerning this transaction in any way?

The Witness: I don't recall of talking to anyone in Twin City.

The Court: May I have her answer read? I didn't hear it.

(Answer read.) [431]

Q. (By Mr. Jacobs): Did you during this period of time, namely from October 1953 until September or November of 1954 regarding the trust agreement and the note?

A. I am sorry, I didn't quite catch that.

(Testimony of Mrs. Pearl K. Lannin.)

The Court: Read it.

Q. (By Mr. Jacobs): Did you talk to anyone other than from Twin City? You testified you didn't talk to anyone except Mr. Hunter in Twin City. Did you talk to anyone else regarding the trust agreement and the note?

A. Well, perhaps to the attorneys.

The Court: To whom?

The Witness: The attorneys.

The Court: By that you mean——

The Witness: My attorneys.

The Court: Mr. Robidoux?

The Witness: Yes, and Mr. Jacobs.

The Court: Anyone else, any other attorneys besides Mr. Robidoux?

The Witness: I don't——

The Court: During that period?

The Witness: I don't recall any, no.

Q. (By Mr. Jacobs): Did you discuss the facts surrounding the October transaction with your attorneys?

Mr. Shapro: I object, if your Honor please, upon the ground that it is self serving and calls for hearsay and [432] is not binding on the defendants, her conversation with her own counsel.

The Court: She did—I don't know when you mean, counsel. She did because at the October transaction with Mr. Robidoux she has already testified about that.

Now are you referring to that or referring to some later time?

(Testimony of Mrs. Pearl K. Lannin.)

Mr. Jacobs: I am referring to later than that.

The Court: All right. Ask her October if she talked to Mr. Robidoux about that matter until a certain time.

Q. (By Mr. Jacobs): Did you discuss with Mr. Robidoux after the October transaction the facts surrounding the guarantee and trust agreement prior to the hearing on the Lannin claim?

The Court: Now that is prior to September and October 1954?

Mr. Jacobs: September and October and November of 1954.

The Witness: Yes. I talked—after I talked to Mr. Hunter, I talked to the attorney, Mr. Robidoux or you, or both of you.

Q. (By Mr. Jacobs): Did you discuss with them the facts surrounding the October transaction?

A. Well, I can't remember just what we discussed. I know that after Mr. Hunter was at my home, I talked to them about his wanting payments. [433]

Q. You talked to him, about Mr. Hunter wanting payments?

A. And that would be the trust—the note and the trust agreement together.

Mr. Shapro: I move to strike the latter part of that, if your Honor please, upon the ground that—“that would be the trust agreement and the note”—as her conclusion.

The Court: Well, it may remain.



(Testimony of Mrs. Pearl K. Lannin.)

Mr. Jacobs: Did you discuss with anyone the facts surrounding the October transaction after the hearings on the Lannin claim?

A. Well, it would be just the attorneys.

Q. You talked to your attorneys about it, is that your testimony? A. It would be, yes.

Q. Did you talk to anyone else after the Lannin claim in that regard?

A. I can't recall if—at times I talked to Mr. Elliff a few times, but I wasn't talking you know, regarding the claim particularly.

Q. Did you talk to Mr. Elliff during the period after the October transaction and prior to the hearings on the Lannin claim in regard to the October transaction?

A. Well, I may have. I can't recall just, you know, what happened in there. It was over a long period, these hearings. At different times you talk to people just like I have talked [434] to different people here.

Q. Do you remember what your conversation was with Mr. Elliff at any of these particular times?

Mr. Shapro: I object to the question if your Honor please, on the grounds that it calls for hearsay and it is self serving, not binding on the defendants.

The Court: I am inclined to think the objection is good. Counsel, nobody is charging this lady with any bad faith that I know of.

(Testimony of Mrs. Pearl K. Lannin.)

Mr. Jacobs: Well, your Honor, I have no further questions.

The Court: I think she has testified to her knowledge of the transaction as it occurred around October, 1953. There is nothing in that testimony to indicate that she is in any way involved in any claim of bad faith. Isn't that correct, gentlemen?

Mr. Shapro: That is correct, your Honor.

Mr. Jacobs: That is correct.

The Witness: Your Honor, I don't know if I can answer or say anything or not?

The Court: You don't have to answer. I am saying that nobody is charging you with bad faith at all, Mrs. Lannin. I think I understand the circumstances and what happened.

Mr. Jacobs: No further questions.

Mr. Shapro: I have no questions. [435]

The Court: That is all.

Mr. C. Huntington Jacobs: We have none.

(Witness excused.)

Mr. Robert Jacobs: Now if your Honor please, in light of the allegation in the cross complaint that damages were suffered by Mrs. Lannin because of the transaction and which damages we are asking from Twin City Lumber Company, I would like to be sworn and testify as to Mrs. Lannin's expenses.

MR. ROBERT JACOBS

appearing as a witness, sworn.

Mr. Shapro: For the record, at this time I move

(Testimony of Mr. Robert Jacobs.)

to exclude any evidence in support of the claim for damages set forth in the cross complaint.

The Court: Motion is taken under submission. Go ahead.

Mr. Robert Jacobs: My name is Robert N. Jacobs——

The Court: What are you going to testify to, the value of the services you performed?

Mr. Jacobs: Yes, your Honor.

The Court: Why don't you make that statement as to what it is and if there is any cross examination, they may examine you. First, do you have a time amount that you spent, roughly?

Mr. Jacobs: Yes, your Honor.

The Court: How much time?

The Witness: Roughly eight full days, your Honor. [436]

The Court: That you spent in prosecution of this Lannin case?

The Witness: Right.

The Court: That is exclusive of this suit?

The Witness: Right.

The Court: And do you desire to give a value as to that?

The Witness: I estimate roughly, your Honor, my services in that relation at \$1000.00. I was present at all the hearings which the attorney for the trustee has previously testified to, and traveled to Los Angeles, to Oakland, to San Jose and so forth.

The Court: Are there some expenses in addition then?

(Testimony of Mr. Robert Jacobs.)

The Witness: The expenses of the trips to Los Angeles, to San Francisco, and to Oakland I would estimate at about \$150.00, your Honor, included in that is a third party claim proceeding in San Francisco which occurred just previously to the bankruptcy of Mr. Elliff.

The Court: Is your office in San Jose?

The Witness: San Jose.

### Cross Examination

Q. (By Mr. Shapro): Just one question, your Honor. This third party claim in San Francisco, does that have anything to do with the Twin City Lumber Company?      A. No. [437]

### Redirect Examination

Q. (By Mr. C. Huntington Jacobs): Mr. Jacobs, do you have a copy, a certified copy of the Referee's order denying the claim of Mrs. Lannin?

A. I do, Mr. Jacobs.

Q. If I said third party claim, I meant to say adverse claim. You have seen it, Mr. Shapro?

Mr. Shapro: No, I have never seen it.

Mr. C. Huntington Jacobs: I am showing you an order denying the adverse claim of Mrs. Pearl K. Lannin dated October 18th, 1955, and bearing the stamped signature of Bernard J. Abrott, and bearing also a certification by Judge Abrott. Is that the order to which you have just referred?

Mr. Robert Jacobs: That is the order to which I have just referred, Mr. Jacobs.

(Testimony of Mr. Robert Jacobs.)

Mr. C. Huntington Jacobs: For completion of the record, your Honor, we will offer this as trustee's next in order.

The Court: Exhibit 19.

(Thereupon the foregoing order denying the claim of Mrs. Pearl K. Lannin was introduced as Plaintiff's Exhibit No. 19.)

The Court: Anything further?

Mr. C. Huntington Jacobs: Nothing further.

The Court: Is that all?

Mr. Shapro: Nothing further. The defendants will call Mrs. Bea Swanson. [438]

### MRS. BEA SWANSON

a witness called by the defendants, sworn.

The Court: State your full name, please.

The Witness: Mrs. Bea Swanson.

### Direct Examination

Q. (By Mr. Shapro): The first name is Bea, B-e-a, is that correct? A. That is right.

Q. And you are employed by Twin City Lumber Company. A. Yes, I am.

Q. In the latter part of 1953 and up to that present time you are and then were the office manager of that concern in Los Angeles?

A. That is right.

Q. And among the records of the office of which you were in charge, was there included the accounts and records of the Twin City Lumber Company and its business with George Elliff of Pine Supply Company? A. Yes.



(Testimony of Mrs. Bea Swanson.)

Q. And also the preceding partnership of Abbot Lane?      A. Yes.

Q. Have you brought with you to this courtroom at our request certain of the records of Twin City Lumber Company in connection with Pine Supply?

A. Yes, I have. [439]

Q. Now, Mrs. Swanson, from your records can you tell the Court whether or not the \$1200.00 check of April 23rd, 1954 given to Twin City Lumber Company by Mr. Elliff was ever returned for non payment?      A. No, it wasn't.

Q. Can you tell, Miss Swanson, from your records whether or not there was sold to Mr. Elliff during the period of the warehouse from May to October of 1953 and put in the field warehouse plywood?

A. Well, I would have to look at the invoices. I don't remember.

Q. The invoices. May I have Exhibit 4?

I show you Plaintiff's Exhibit 4, Mrs. Swanson; will that assist you?

The Court: If this testimony is from the record, can't counsel stipulate what the record is?

You have both examined it, haven't you?

Mr. Shapro: I know I have. The purpose of the testimony is, your Honor, that contrary to the testimony of Mr. Elliff, there was plywood sold by us and warehoused by us.

The documents there indicate the sale from the witness. I will produce the warehouse receipts.

Mr. C. Huntington Jacobs: I didn't know there

(Testimony of Mrs. Bea Swanson.)

was any controversy at all about some plywood. I might concede that it is contrary to Mr. Elliff's testimony. This is a matter [440] for argument. But there certainly were sales of plywood.

Mr. Shapro: And is it admitted that the plywood that was sold according to the invoices in Exhibit 4 were put in the field warehouse?

Mr. C. Huntington Jacobs: Well, I have no reason to believe otherwise.

Mr. Shapro: Is it so stipulated? If not, I will prove it. The witness Elliff, your Honor, testified positively that we sold him no plywood and no doors. I am proceeding to say that we sold him plywood; we warehoused it; we did not sell him any doors.

Mr. C. Huntington Jacobs: The plywood, some plywood was put in the warehouse. There is no question about that.

The Court: All right. Do you have the figure there?

Mr. Shapro: I am trying to show it, your Honor. But apparently I can't—

The Witness: Yes, it's invoice 667.

The Court: What?

The Witness: It's invoice 667.

The Court: All right. How much plywood?

The Witness: \$4051.53.

Q. (By Mr. Shapro): I will save you some time by saying there are no more. Those are the only invoices because I have examined them.

Do you have a warehouse receipt showing that the

(Testimony of Mrs. Bea Swanson.)

plywood [441] that you have just identified from this invoice was put in the field warehouse?

Mr. C. Huntington Jacobs: That was the only purpose, we will stipulate to——

The Witness: Yes.

Q. (By Mr. Shapro): Now, Mrs. Swanson, what charges in addition to the invoices were made on the warehouse account by Twin City Lumber Company against Elliff?

A. I didn't understand that.

Q. Besides the invoices that were charged against Mr. Elliff by Twin City Lumber Company, additional charge was made, was it not?

A. Interest.

Q. And at what rate and in what amount?

A. Well, we took the high and the low for the month, got an average, charged him six per cent.

Q. Six per cent per annum? A. Yes.

Q. Were there any other charges that you know of that were made other than as the invoices indicate and the interest charged that you have just testified to as far as the Elliff account with Twin City is concerned?

A. Well, \$21.00 protest fee and returned checks that went to make up the note.

Q. Nothing else? [442]

A. Nothing else.

Q. Now Mrs. Swanson, the 2 per cent cash discount that is referred to in the invoices that are part of Exhibit 4 was given and extended to Mr. Elliff by Twin City under what conditions?

(Testimony of Mrs. Bea Swanson.)

A. On the 30 per cent that he was to pay us in cash, he was allowed 2 per cent discount on that portion.

Q. Miss Swanson, I show you a document that purports to be a financial statement of Pearl Lannin as of June 26th 1953 and ask you whether you have seen that document before?

A. Yes, I have.

Q. And where did you see it?

A. In my office.

Q. In the office of Twin City?

A. Twin City Lumber Company.

Q. And was it part of the file of Twin City Lumber Company on the Elliff account?

A. Yes, it was.

Mr. Shapro: At this time, if your Honor please, we will offer in evidence the financial statement of Pearl K. Lannin as of June 26th, 1953.

The Court: Well, it may be received and marked Exhibit J.

The Court: When was it in the office, Mrs. Swanson? When did you receive it? [443]

The Witness: Well, I don't remember. I would have to look and see if there is any date on it.

The Court: It has a date, the date was given to you in the question, June 26th, 1953. Did you receive it at that time? What time?

A. Well, it was probably several days after that.

The Court: Are you guessing? Do you have any way of knowing when you received it?

The Witness: May I look at it again?

(Testimony of Mrs. Bea Swanson.)

The Court: Well, this is stamped November 28th——

Mr. Shapro: No, that is the Court stamp.

The Court: Oh.

Mr. Shapro: The time of receipt will be supplied by another witness, the one who actually got it.

The Witness: Well, I can't remember.

Mr. Shapro: Your Honor, it developed that the Exhibit 4, Plaintiff's Exhibit 4, was short one invoice. To complete the record which we have now made available and counsel is prepared to stipulate, it may be added to and become a part of Exhibit 4.

Mr. C. Huntington Jacobs: That is correct.

Mr. Shapro: And there were two invoices which were omitted from the Exhibit 12, which is the Abbot Lane Company account, which we have now obtained and counsel is prepared to stipulate they may be added to Exhibit 12 to complete the [444] record.

The Court: Clip them to the Exhibit.

Mr. C. Huntington Jacobs: All right.

Mr. Shapro: I have no further questions of this witness.

#### Cross Examination

Q. (By Mr. C. Huntington Jacobs): Mrs. Swanson, have you told us all of the accounts that you kept as bookkeeper for Twin City Company with the Pine Supply Company?

Have you told us all of the accounts that as bookkeeper for Twin City Company you kept of dealings between Twin City Company and Pine Supply



(Testimony of Mrs. Bea Swanson.)

Company?           A. Today, you mean?

Q. Yes, have you mentioned them all?

A. No.

Q. What else was there?

A. Well, we had Abbott Lane to begin with and then Pine Supply, then we had the warehouse account and the interest account; later, the unpaid warehouse account plus returned notes were set up or returned checks were set up in the note account.

Q. You had a special designation for that returned check account, did you not? You had a certain number that indicated it, number 376-A or something of that sort?           A. No.

Q. Did you not? [445]

A. No, I don't think we did.

Q. 117-B, does that refresh your recollection?

A. Yes.

Q. And in that account you kept a record of all of the returned checks, did you?

A. That is right.

Q. That is, that were not paid on presentation, checks that had been received from Pine Supply Company?           A. That's right.

Q. Have you got that account with you?

A. That's——

Mr. C. Huntington Jacobs: It is in evidence. It is the warehouse account, so called, that is 117-B. What is the number of that?

Mr. Shapro: It is the big yellow sheet.

Mr. C. Huntington Jacobs: Mr. Shapro, this is account 117. This is not account 117-B. There were

(Testimony of Mrs. Bea Swanson.)

two separate and distinct accounts, were there not? One of them account number 117, which is what you referred to as the warehouse account, and the other an account covering bad checks and one or two other items, isn't that right?

The Witness: That is right.

Q. (By Mr. C. Huntington Jacobs): Have you got that latter account with you?

A. Yes. [446]

Q. Will you show me the 117-B account?

A. There it is. Mr. Baum has a sheet like that too.

Q. This isn't the copy, apparently?

A. That is one of them.

Q. Yes, 117—

A. But he got this one too down in Los Angeles.

Q. Did he? A. Yes. That is bad checks.

Q. I notice that on this account 117-B which you have just shown us and are showing us now, it starts out with notation of "Three returned checks."

One entry is the first entry and is dated October 8th, 1953, is that correct?

A. And the other two are entered on the same date. The first one is for \$741.26, the second one for \$7310.98, the third for \$2500.00.

Are there any more returned checks entered on this 117-B? Just those three? A. That's all.

Q. This account does not show what time these checks were received by your company which was

(Testimony of Mrs. Bea Swanson.)

then I understand Twin City Company? Do you have that information with you?

A. No, I don't have it with me. But it was somewhere around the 1st of October. We banked in San Francisco, you know, and by the time the checks got to us it was just probably [447] after the first of the month.

Q. I see. Now your procedure was as I understand it from your testimony, first to enter the check when received as the credit on the open account, and then if the check was not paid you entered that check on the bad check account, as I recall it, this 117-B, namely? A. That's right.

Q. Is that right? A. Yes.

Q. You did not in any instance charge back as a charge against the open account the amount of the bad check, is that correct, you charged——

A. No, not if we didn't put it back through the bank again, if we weren't going.

Q. Well, if you did put it back through the bank and it still was not paid, you still did not enter it as a debit on the open account, did you? A. No.

Q. Instead of that, you entered it as a debit on that bad check account, am I right?

A. That is right.

Mr. Shapro: If your Honor please, so there may be no confusion. The bad check account, the account in question, 117-B is headed "Notes Receivable". I mean I don't want any confusion. [448]

Mr. Jacobs: Yes. It is entered "Notes Receiv-

(Testimony of Mrs. Bea Swanson.)

able". But I am trying to identify it specifically because I am talking about bad checks.

Q. Is the account that you have just referred to and just shown us which is numbered 117-B—that is not the same account as 117, is it? A. No.

Q. And it is also not the same account as the, what I have referred to as the open account which covered the invoices and the payment made on account of the invoices?

A. The credit was on 117-B when we originally got the check. Then when it bounced I put it in the 117-B.

The Court: Just a moment. Read that answer.

(Answer read.)

The Court: Is that what you mean to say?

The Witness: That is what I mean to say.

The Court: I don't think you do.

Mr. Jacobs: I don't think so, your Honor.

The Court: Read it again.

(Answer read.)

Q. (By Mr. Jacobs): You don't mean do you that it was—that the credit was originally given on this 117-B which I am calling the bad check account; a credit wouldn't be given on that in the first instance, would it?

A. The credit was given. [449]

Q. I don't want to argue about it, but I do want to straighten your testimony out if I can.

A. The credit was given on 117-B.

The Court: But you said it was given on 117-B, that is what we are calling your attention to.

(Testimony of Mrs. Bea Swanson.)

The Witness: Oh, I am sorry. The 117 is the warehouse account and that is where the credit was first given when we received the check. Then when it bounced it was put over on this note account, the 117-B.

Q. (By Mr. Jacobs): I see. Now will you please look at the Trustee Exhibit No. 4, look at this portion of it which is a photostat of the ledger sheet, and tell us whether that is account 117 on your books. A. No, it isn't.

Q. 117 is a separate and distinct account, is it, from the account comprising Exhibit 4?

A. Yes, that's right.

Q. Well, I notice here on this Exhibit 4 there are a number of credits given, I presume for checks that came in, am I right?

A. Well, not always are they checks. Some of that is the 70 per cent credit we gave him on the warehouse account.

Q. I see. However, this includes all the credits, does it not? A. Yes. [450]

Q. For merchandise that was supplied by Twin City to Pine Supply Company? A. Yes.

Q. Now were you the bookkeeper at the time on September 14th 1954 when this account comprising Exhibit 4 was brought to a balance of zero?

A. I was.

The Court: What is the date of that?

Mr. Jacobs: September 14th, your Honor, 1953.

Q. And on that same date of September 14th, 1953, how did the warehouse account stand; was



(Testimony of Mrs. Bea Swanson.)

Mr. Elliff indebted to the company on that account at the time?      A. Yes, he was.

Q. In what amount?      A. By \$25,468.29.

Q. On October 6th 1953 according to Exhibit 4 there was nothing due on Exhibit 4 account, as I call it, the open account. Does that agree with your records?      A. That's right.

Q. And on October 6th, 1954, was Mr. Elliff indebted according to your warehouse account, that is, the number 117, did he owe you any balance at that time?      A. 1954?

Q. 1953.      A. Yes, \$28,116.63. [451]

Q. What did that \$28,116.63 include, does your record show that?

A. Yes. There are those three returned checks, \$21.00 protest fees, \$127.34 interest, and the balance of the warehouse of \$17,416.05.

Q. How much interest did you say?

A. Six per cent.

Q. I beg your pardon?      A. Six per cent.

Q. What was the amount in dollars?

The Court: \$127.34.

Mr. Jacobs: Thank you, sir.

Q. You have no knowledge of any charges that might have been made for brokerage, do you, by Mr. Elliff of Twin City?

A. I don't know what you mean by brokerage.

Q. Handling the transaction whereby Twin City Company procured any—any transaction whereby Twin City Company procured from others and furnished to Elliff, that is, under the name of Pine

(Testimony of Mrs. Bea Swanson.)

Supply Company, merchandise for his business?

A. No.

Q. Do your books show any transaction?

A. No, they don't.

The Court: Suppose we take a recess at this time, counsel. What is counsel's estimate? Are we going to finish today? [452]

Mr. Shapro: I doubt it, your Honor.

Mr. Jacobs: I will complete my cross examination of this witness in not over ten minutes.

Mr. Shapro: But we have three more witnesses, your Honor.

Mr. Jacobs: But I don't want to do it now, necessarily, your Honor.

The Court: That is all right.

(Recess.)

(Thereupon this hearing was adjourned until 2:00 o'clock p.m.) [453]

Monday, November 28, 1955

2:00 p.m.

MRS. BEA SWANSON

a witness called by the defendants, previously sworn.

Cross Examination—(Continued)

Q. (By Mr. C. Huntington Jacobs): Mrs. Swanson, I want to be sure that we have covered the records that were kept by Twin City Company of its financial dealings with Pine Supply Company or with George F. Elliff individually.

(Testimony of Mrs. Bea Swanson.)

If I understand you correctly, you kept three accounts, the open account which comprises Exhibit 4—well, I will proceed while we are looking for them.

That was the one that you examined this morning that was called the open account and it includes the invoices, a lot of invoices attached to it, that was the one that was brought to a balance of zero in September, around September 14th, 1953.

By the way, before we leave that, what is your number for that one; you had each of these accounts numbered, did you not?

A. No. That was just accounts receivable. That wouldn't have any special number.

Q. That didn't have any number at all?

A. No. [454]

Q. There was that one and then there was the warehouse account transcript of which is made by Mr. Baum. That's number 117 and that one covered 70 per cent advance, did it?

A. Yes, it did.

Q. On each of these invoices?

A. Yes.

Q. Did it cover any interest on the 70 per cent advance?

A. No.

The Court: Did you answer no?

The Witness: No.

Q. (By Mr. Jacobs): Did it cover anything else than the 70 per cent?

A. That is all it covered, 70 per cent.

Q. I see. Now I notice that there are several credits on this warehouse account. Are those the same credits that were entered on the open account?

(Testimony of Mrs. Bea Swanson.)

A. Yes, they would be.

Q. The same items were entered as credits on the warehouse account that were entered on the open account?

A. Well, I am not sure if it would be in this particular amount.

Q. Are these items all items of credit that were entered also on the open account? A. Yes.

Q. And those are payments, are they, on account, these [455] credits are payments on account of the 70 per cent? A. Yes.

Q. Advance? A. Yes.

Q. Then you had the third account which was what I have been calling the bad check account and was entitled on your ledger "Note Account." And you have entered there as you have testified three bad checks that never have been made good?

A. That's right.

Q. And as I understand it, you have some other items entered on this account 117-B, which is the bad check account or the note account and those are protest fees and interest?

A. In the balance of the warehouse account.

Q. The unpaid balance of the warehouse account? A. That's right.

Q. That is right. Now interest was interest on what, the 70 per cent advance?

A. The interest was figured — well, sure, the warehouse account was only 70 per cent of the total that was in there. Then we would take the high and

(Testimony of Mrs. Bea Swanson.)

the low for the month and get the average, divide it by two, and then figure it at six per cent.

Q. That is, the high and low of the average outstanding on the warehouse account which is number 117, is that right?

A. Yes, that is right. [456]

Q. Now does any one of those three accounts reflect any credit or contain any entry of credits for the \$28,000 note?

A. Well, this note account was credits against it. It wouldn't never——

Q. You mean for the payments that were received on the note? A. Yes.

Q. But the note itself was never entered as a credit on any of your three accounts, am I right?

A. No.

Q. I see.

The Court: Well, are you right or not? I don't know from that answer if you are or not, Mr. Jacobs. You say "Am I right" and she says "No." So I don't know.

Mr. Jacobs: Thank you, your Honor. I didn't realize the answer was ambiguous.

Q. Was I correct in stating that none of the three accounts contains any credit for the note as such, but they contain credit only for the payments that were received on the note, is that a correct statement?

A. The note is made up of those three returned checks, the balance on the warehouse, protest fees and the interest. That is the debit to the account



(Testimony of Mrs. Bea Swanson.)

which makes up the amount of the note. Any payments received on that was given credit for.

Q. Now, were the payments that were made on account of the note credited as against these bad checks? [457]

A. Well, not individually, no, because the total amount made up the note.

Q. I see. Now the bad checks made up a part of the total of the balance shown by the note account, did they? A. That's right.

Q. And does any one of these three accounts according to your records contain any credit of \$28,000.00 in one lump sum? A. No.

Q. Or of any figure near \$28,000.00?

A. No.

Q. In one lump sum. And there isn't any entry of credit as of the date of October 6th or October 8th or any date near that, near either of those dates for the execution of the note, am I right?

A. I don't know what you are asking me.

Q. Was the fact that the note had been executed ever entered on any one of those three accounts?

A. Well, that 117-B is the note, that is all the entry there is concerning it.

Q. I think that we ought to ask for the production of this 117-B. I don't want to disturb your records.

Mr. Shapro: We were going to offer it with the stipulation, if we may have it on the Court's approval, that a photostatic copy may be substituted for the original. [458]

(Testimony of Mrs. Bea Swanson.)

Mr. Jacobs: That is entirely agreeable.

Mr. Shapro: These are the original records of the Twin City Lumber Company.

Mr. Jacobs: I think the Court might wish to examine it in connection with these other two accounts.

Mr. Shapro: I have no objection, your Honor.

The Witness: Well, wait. Why don't—tell him—

The Court: What do these credits consist of?

The Witness: Payments on the note.

The Court: You have no mention of a note on that page at all, have you?

The Witness: It is marked "Notes Receivable".

The Court: That is at the top of the page?

The Witness: That is the——

The Court: Did you—there is no definite description of any particular note in any particular amount is there?

The Witness: Well, no, except that it is Pine Supply note——

The Court: Well, it doesn't say "Pine Supply note". I am talking about any entry here that is talked about, a promissory note, in any particular sum. It isn't there, is it?

The Witness: No.

The Court: You are later going to offer this?

Mr. Shapro: Yes. [459]

Mr. Jacobs: Q. Now, Mrs. Swanson, all of these checks, these bad checks that are entered on that so called note account, 117-B, were received were they not, prior to October 6th of 1953?

A. Yes.

(Testimony of Mrs. Bea Swanson.)

The Court: What is that again? I didn't get that.

(Record read.)

Mr. Jacobs: Q. And where are the three checks, the vouchers, the three check vouchers that are entered on that note account at the present time, if you know?

A. You mean the returned checks?

Q. Yes, the ones—they came back to you, did they not? A. Yes, they did.

Q. Where are they now?

A. Mr. Shapro has them.

Mr. Shapro: I have two of them, the other is already in evidence.

Mr. Jacobs: Am I right in saying, Mrs. Swanson, that so far as you know these three checks that you have entered there have never until this moment, or until this trial began, been handed back to the bankrupt or the plaintiff in this case?

A. That's right.

Mr. Jacobs: We will offer these two for completion of the record. I think we can make [460] one Exhibit out of them, your Honor.

Mr. Shapro: The first check is Exhibit 15, your Honor.

The Court: Make that Exhibit 15-A please.

(Thereupon the foregoing checks and notice of protest were entered as Plaintiff's Exhibit 15-A.)

Mr. Jacobs: Q. Are there any other records of financial dealings in your keeping, that is of finan-

(Testimony of Mrs. Bea Swanson.)

cial dealings between Twin City Company and George F. Elliff other than these three accounts you have referred to and other than the account with Abbott Lane Company?

Mr. Shapro: If your Honor please, I object to the question on the ground it assumes a fact not in evidence because this morning the witness testified there was an interest account, a fourth one.

The Court: The question is, are there. She can answer yes or no.

The Witness: A. Yes, there is an interest account.

Mr. Jacobs: Q. And this interest account is other and different, is it, from the note account that contains these entries of interest?

A. Yes.

Q. Will you show me the interest account that you have just referred to?

A. You are supposed to have that too. He made a copy of it.

Q. And this interest account I observe is numbered 117-A. [461] The total current balance of it appears to be \$127.34, is that correct?

A. It was until it was transferred over here. Here it is. (Indicating.)

Q. And that \$127.34 was transferred over and now appears on account number 117-B and now appears as the sixth entry on 117-B, is that correct?

A. That's right.

Q. Now what interest is included in account 117-A, interest on what?

(Testimony of Mrs. Bea Swanson.)

A. Well, that was the September interest on the warehouse account.

Q. That is to say upon the 70 per cent advances?

A. Well, it was on \$17,416.05.

Q. Now except by that transfer, 117-A, account 117-A was never closed, was it?

A. What was that?

Q. 117-A was never closed except by the transfer of this balance \$127.34 to account 117-B, am I correct about that?

A. That was the only entry on there that was left that was balanced out before September.

Q. I see.

A. He paid the August interest in July.

Q. I see. And except to the extent of payments received on the note account, 117-B has never been closed, has it? [462]

A. Yes, it has, as of now.

Q. What date was it closed?

A. January 1st, 1955, we formed a new partnership and transferred the assets and liabilities to the new partnership.

Q. In 1955? A. That's right.

Mr. Jacobs: Doesn't she mean 1954?

Mr. Shapro: I think she means '54.

Mr. Jacobs: Q. I don't want to confuse the record, Mrs. Swanson. Am I not right in saying what you really mean is 1954, wasn't that the date of forming the new partnership? A. No.

Q. January 1st, 1954?

A. I believe it's still 1955.



(Testimony of Mrs. Bea Swanson.)

Q. All right.

A. Wait, I will see if I can find something.

The Court: Let's move on to something else.

Mr. Jacobs: Yes, your Honor. I really wanted to cover that trivial detail.

Q. Now then, the warehouse account—I am moving on—— A. No, '54 is right.

Q. '54 is correct. The warehouse account was number 117, Mrs. Swanson, appears on your books, I take it, it is an account that is still current, it has not been closed? A. 117? [463]

Q. Yes. A. No, it's closed.

Q. And when was that done?

A. When the note was received.

Q. Is there any entry there showing that fact?

A. Sure, journal 15 credited that account, charged it over here in this note account.

Q. You have transferred the items then from 117 to 117-B, is that correct?

A. That's right.

Q. And that is the entry or the series of entries that you referred to as having closed 117, is that right? A. That's right.

Q. Very good. Mrs. Swanson, have you ever seen among the records in your charge a list of accounts receivable of Pine Supply Company, a written list of them? A. Of Pine Supply?

Q. Yes. A. No, I haven't.

Q. Have you ever seen among those records rolls of tape, adding tape, adding machine tape I should say? A. No.

(Testimony of Mrs. Bea Swanson.)

Mr. Jacobs: I think that is all.

### Redirect Examination

Mr. Shapro: At this time if your Honor [464] please the defendants will offer in evidence ledger sheet 117-A, which is headed "Accrued Interest Pine Lumber Company" and sheet 117-B which is headed "Notes Receivable, Pine Supply Company."

The Court: They may be marked as one Exhibit, Exhibit K.

(Thereupon the foregoing ledger sheets were marked as Defendants' Exhibit K.)

Mr. Jacobs: If counsel wishes to substitute photostatic copies for them, we have no objection.

Mr. Shapro: Q. Miss Swanson, the entry on 117-B that balanced the account out on December 31st, 1954, journal 33, represented as I understand it a transfer of that receivable balance to the books of the new partnership, is that right?

A. That's right.

Mr. Shapro: That is all.

### Recross Examination

Mr. Robert Jacobs: Q. Miss Swanson, you have discussed the status of George Elliff's account with Pine Supply Company. Can you tell me whether at any time during the dealings of Pine Supply Company with Twin City Company George Elliff's account was current?

A. Well, I wouldn't be able to tell you without looking at the ledger sheet; in May 1953.

(Testimony of Mrs. Bea Swanson.)

Q. In May 1953 his account was current. When in May was that, Miss Swanson?

A. Well, June 1st. [465]

Q. When in May was the account current? Did you testify that it was current in May, Miss Swanson?

A. Well, maybe I did. I will withdraw that.

Q. Was it ever current?

A. Well, it wasn't—no, I guess it wasn't.

Mr. Jacobs: Thank you, Miss Swanson.

#### Further Redirect Examination

Mr. Shapro: Q. Miss Swanson, will you point out to the Court on Plaintiff's Exhibit 13 which is account number 117 wherein Mr. Elliff was given credit for two of the three checks that were subsequently charged to the note account 117-B?

A. Do you want me to show——

Q. Show on account 117 where Mr. Elliff was given credit for the checks which after they bounced were charged against him on 117-B.

A. There's where he got the credit for them (indicating).

Q. The witness is pointing to the item, item 107398 under date of September 21st, 1953 on account 117. That is the amount of the first check which is Exhibit——

The Court: Well, Mr. Shapro, all three checks when they were received were credited to his account, weren't they?

The Witness: Yes.

(Testimony of Mrs. Bea Swanson.)

The Court: And later——

The Witness: Charged back. [466]

The Court: And when they were not honored they were charged back.

Mr. Shapro: They were charged back on a different account. I didn't want to leave the impression that they were charged twice.

The Court: Well, I didn't get that impression.

Mr. Shapro: No other questions.

The Court: That is all.

(Witness excused.)

Mr. Shapro: We will call Mr. Collins.

### HOWARD COLLINS

called as a witness for the defendants, sworn.

The Court: State your name, please.

The Witness: Howard Collins.

### Direct Examination

Mr. Shapro: Q. Mr. Collins, are you connected with Twin City Lumber Company?

A. That is right.

Q. And you were connected with Twin City Company, its predecessor, in 1953?

A. That is right, sir.

Q. And you know Mr. Elliff, the gentleman who testified previously in this case?

A. That is right, sir.

Q. And did you know him in 1953? [467]

A. Yes, sir.

Q. Did you know him in 1952? A. Yes, sir.

Q. Mr. Collins, do you recall—just answer this

(Testimony of Howard Collins.)

question yes or no—a meeting in the Fairmont Hotel in San Francisco in 1951 at which you and Mr. Hunter and Mr. Elliff were present?

A. I remember the meeting, sir, but—yes.

Q. Do you recall a meeting in the San Francisco office of Twin City Lumber Company in August of 1953 at which Mr. Hunter, Mr. Elliff and Mr. Baum were present, and you and Mr. Ramsay were in and out of the room?

A. Yes, sir.

Q. Do you recall a meeting in the office of Twin City Lumber Company in Los Angeles in the latter part of April or the first part of May of 1953 at which Mr. Elliff and Mr. Hunter and you were present?

A. There was a meeting, sir, but it wasn't at Mr. Hunter's office, at his home.

Q. It was at his home?

A. And it was, I think in the beginning of April or May, sometime in that time.

Q. Referring your attention to the meeting in 1951 at the Fairmont Hotel, was Mr. Elliff's financial condition discussed?

A. No, sir, it wasn't.

Q. With reference to the meeting in Mr. Hunter's home of [468] April or May of '53, was the financial condition of Mr. Elliff or Pine Supply discussed?

A. No, sir, other than Mr. Elliff was formerly interested in a sawmill by the name of the Coast Range Lumber Company and at that particular time we were just—mentioned Mr. Elliff, how his things come out with the Coast Range Lumber



(Testimony of Howard Collins.)

Company. He said "Well, things are working around all right."

He had pretty well washed his hands of it, as I recall.

Q. Now was that all that was said in your presence at the meeting in 1953, the latter part of April or May at Mr. Hunter's home concerning Mr. Elliff's financial condition?

A. That's all, sir, that I could recall.

Q. Now with reference to the meeting in 1953 in August at the office of Twin City in San Francisco, will you give the Court the substance of the conversation between the three of you to which you were a party and in which you were present only?

A. Well, Mr. Baum and Mr. Elliff were there and Mr. Baum at that time was taking care of the books for Mr. Elliff. He reassured us that everything with Pine Supply was going very well; there was a few of the accounts that were possibly a little slow, but there was nothing to worry about and business was, in their own words, "Very good."

Q. Do you recall any statement by Mr. Hunter at that meeting that unless something was done immediately that he [469] would have to close the account?

A. No, sir.

Q. Do you recall, Mr. Collins, a trip to Madera by automobile on Hallowe'en of 1952 with Mr. Elliff?

A. Yes, sir.

Q. Was anyone driving with the two of you?

A. Just the two of us.

Q. Just the two of you and you went to Madera

(Testimony of Howard Collins.)

and back in one day?           A. That's right, sir.

Q. And the purpose of that trip was what?

A. Mr. Elliff had a lumber connection down there he thought we would be interested in, and since we shipped a lot of the lumber east, we weren't familiar with this mill, he suggested we go down to look over the mill.

Q. You talked all the way down and back?

A. Yes, sir.

Q. Was anything discussed between you and Mr. Elliff on the automobile trip to Madera concerning his financial condition?

A. The only thing that I can remember that was discussed was the Coast Range which got to be kind of a discussion every time we would meet, just like you, what time of the day it is or how it was, the weather today.

Q. What was said by you and him in substance concerning Coast Range on this automobile trip?

A. He had written it off to experience.

Q. Did he tell you the amount if any indebtedness of Coast Range for which he was responsible?

A. No, sir.

Q. Did he mention the percentage or proportion of any financial responsibility of his for the debts of Coast Range?           A. Not whatsoever.

Q. Did he tell you in that conversation anything concerning his proposed business arrangement with Mr. Hodes, this is the automobile trip?

A. He may have discussed something on it but I have forgotten. At that time I believe he was

(Testimony of Howard Collins.)

working for Mr. Hodes and they planned on putting—setting up an organization whereby he would have a larger share in the participation.

Q. Did Mr. Elliff tell you on this trip to Madera that he was behind in payments on his home, and the Veterans Administration was going to foreclose? A. No, sir.

Mr. C. Huntington Jacobs: Objected to as leading and suggestive. This is the defendant's own witness.

Mr. Shapro: This is on the basis of a proposed categorical denial of the plaintiff's witness, your Honor.

Mr. Jacobs: That is just the purpose of the objection, your Honor. Can't we hear what was said without counsel testifying himself? [471]

The Court: I don't think this is a question for impeachment, is it, Mr. Shapro?

Mr. Shapro: No, your Honor.

The Court: If it was, you would be permitted to give the exact question and lead the witness. But I don't think it is. I think you would have to ask what was said at the conversation.

Q. (By Mr. Shapro): Mr. Collins, will you tell the Court what was said by you and by Mr. Elliff on this automobile trip concerning his financial condition?

A. Insofar as his financial condition, to the best of my recollection, the only thing that was discussed was Coast Range and that was just touched on briefly.

(Testimony of Howard Collins.)

And as I mentioned, Mr. Elliff had mentioned, he charged that up to experience, that was water under the bridge.

Q. And have you told the Court this afternoon all that you recall of the discussion had at the office of Twin City in San Francisco in August of 1953 concerning Elliff's financial condition?

A. That meeting was held during the course of our normal business and I was in and out of the conversation. As I recall, the pertinent information I have already testified to.

Q. And have you given the Court all of the conversation that you remember took place in Mr. Hunter's home in April or May of 1953 concerning Elliff's financial condition? [472]

A. That is right, sir.

Mr. Shapro: You may cross examine.

### Cross Examination

Q. (By Mr. C. Huntington Jacobs): Do you know how long that meeting in August of 1953 that you have referred to lasted? A. No, I don't.

Q. Do you know how long all together you spent in attendance at that meeting?

A. I was there, I would say, the better part of several hours. But I was doing other business as well.

Q. So the meeting must have lasted several hours, right?

A. I would think so, strictly by memory.

(Testimony of Howard Collins.)

Q. Well now what was the subject matter of the discussion that lasted several hours, I mean, that was discussed for several hours?

A. I wasn't in on the conversations so I couldn't say.

Q. You didn't take any part in it?

A. That is right. I didn't take any part at all except right there when Mr. Baum and Mr. Elliff came.

Q. What was your connection with Twin City Company in 1952?      A. I was a partner.

Q. At the time of this automobile trip, were you a partner in Twin City Company?

A. Can I withdraw that last statement?

Q. Why, of course, if it's in error. [473]

A. I wasn't a partner, but I was to be a partner.

Q. What was your present connection at that time?

A. I was an employee of Twin City Lumber Company.

Q. As what; what were you doing for them?

A. The buying and selling of lumber.

Q. Did you have anything to do with the extension of credit by them in connection with the sale or purchase of lumber, I mean, in connection with the sale of lumber?      A. Yes, sir.

Q. Now, isn't it a fact that during that automobile trip, Mr. Elliff did tell you in answer to a question of yours that he was broke, didn't he say that?

A. No, sir, he did not.

Q. And did he not say that the Coast Range



(Testimony of Howard Collins.)

Lumber Company wound up, had left him flat, or words to that effect?

A. No, sir, he did not.

Q. Are you sure of that? A. That's right.

Q. Now what did you discuss during this automobile trip from San Francisco to Madera and return?

A. We discussed general things for the most part. I have forgotten them. They were generalities.

Q. You don't remember that conversation clearly enough to tell us what, if anything else, was discussed?

A. We talked about the number that was available, that we [474] had seen, talked about mutual friends.

Q. Did you talk about—you say you don't clearly recall whether you discussed the extension of credit by Twin City to this partnership that—this business that Mr. Elliff was to form with Mr. Hodes?

A. Mr. Elliff was aware of the terms.

Mr. Jacobs: I move that go out as the witness' conclusion.

The Court: It may go out.

Q. (By Mr. Jacobs): Did you or did you not discuss the extension of credit to this firm Abbott Lane?

A. To the best of my knowledge I don't think that was discussed.

Q. Did you not have a subsequent meeting with Mr. Hodes in the presence of Mr. Elliff?

(Testimony of Howard Collins.)

A. We saw Mr. Hodes that night. I had never met the gentleman and Mr. Elliff wanted me to meet him. We met him at his home.

Q. That was at San Jose, was it not?

A. Redwood City on the peninsula.

Q. I see. And that was upon your return from Madera? A. That is right, sir.

Q. And you did discuss with Mr. Hodes at that time, did you, the extension of credit to this firm in which Mr. Elliff was to be interested? [475]

A. To the best of my knowledge, the only thing that was discussed with Mr. Hodes, we expected people to discount their invoices. There was a cocktail party going on and we were late getting back.

Q. When did you first hear of Mr. Hodes?

A. Several months prior to the time that I met him officially.

Q. When did you first discuss with him the possibility of doing business with his firm?

A. I don't recall for sure. It was prior to the time certainly that we did any business with him.

Q. When did you first discuss that matter with Mr. Elliff?

A. I don't recall as to the date on that.

Q. Isn't it a fact that you did discuss with Mr. Elliff in the course of this automobile trip the possibility of Twin City Company extending credit to the firm that Mr. Elliff was intending to form with Mr. Hodes?

A. To the best of my knowledge I, being specific,

(Testimony of Howard Collins.)

I am sure that we wouldn't do something like that.

Q. You didn't discuss that at all with Mr. Elliff on that trip, is that your testimony?

A. To the best of my knowledge, it was not discussed.

Q. Then how did you happen to call on Mr. Hodes immediately upon the conclusion of the trip?

A. It was merely a courtesy call. Mr. Elliff wanted me to meet Mr. Hodes. They were interested in business. [476]

Q. It was first suggested by Mr. Elliff that you call on Mr. Hodes when the trip was finished?

A. That's right. As a matter of fact, I was expected and I didn't even know I was to be there.

Q. You say you were expected?

A. That is right. Apparently Mr. Elliff had told them that I was going to return with him.

Q. But he never said a word to you about it?

A. No, not on the trip. If we got back early enough we were going to go by there.

Q. So your call to Mr. Hodes was discussed during the course of the trip, is that right?

A. Yes. That was the time it was discussed, the first time I knew anything about it.

Q. During the trip? A. That is right.

Q. Was that going or coming?

A. I don't remember if it was going or coming.

Q. I see. Isn't it a fact that in the course of that discussion during the trip you said to Mr. Elliff that you might consider extending credit to Abbott Lane because it had a good credit rating, but you

(Testimony of Howard Collins.)

couldn't extend it on the faith of Mr. Elliff's responsibility?      A. That was not discussed.

Q. That wasn't discussed at all? [477]

A. That's right.

Q. You didn't discuss Mr. Hodes' financial condition either?

A. I didn't know anything about Mr. Hodes financial condition other than the fact that he had been doing some business down there. I assumed through the source of information available to us through trade channels that he must be all right.

Q. At what time of day did this meeting in the Fairmont Hotel that you have testified to take place?

A. It took place in the morning about ten or eleven o'clock.

Q. You said that Mr. Hunter was there, you were there, and Mr. Elliff was there. Was anybody else there?      A. Yes, sir, there were.

Q. Who else?

A. A man by the name of Sullivan, also there who was—had an interest in Coast Range Lumber Company, and a Mr. Pasquinelli was also there, Mr. Pasquinelli.

Q. Mr. Pasquinelli in the Fairmont Hotel in San Francisco?      A. That is right.

Q. How long did that interview last?

A. We had breakfast—it wasn't an interview really—we had breakfast together and I—maybe an hour or an hour and a half.

Q. And what was discussed during that inter-

(Testimony of Howard Collins.)

view, during that meeting if you want to use that term? [478]

A. At that particular time, Coast Range was selling a certain amount of their production to the firm for which I was sales manager. We were interested in buying that lumber. It was critical at that particular time. They assured us if there was some way we could work out some kind of an arrangement whereby we could help them with their log deck they could give us additional production.

Q. Coast Range was heavily indebted to you—withdraw that.

Coast Range was indebted to Twin City Company at that time, was it?

A. No, sir. Twin City had nothing to do with it at that time.

Q. This was in 1951?           A. Yes.

Q. Was there any discussion as to who made up Coast Range Lumber Company?

A. We were told who made up Coast Range Lumber Company, but I don't remember the names.

However, I was told that Mr. Sullivan was a member of Coast Range and also Mr. Pasquinelli had an interest in it as well as Mr. Elliff.

Q. And didn't they at that time say that they were backing it?

A. If they had an interest in it, I assumed they would be backing it.

Q. I see. Now when did you first know that Coast Range [479] Lumber Company dissolved?



(Testimony of Howard Collins.)

A. I don't know, sir, I don't remember. I have no reason to know.

Q. No. Weren't you at the time it dissolved—wasn't the firm for which you were working, wasn't it a creditor at that time?

A. A creditor of Coast Range?

Q. Yes.

A. I had left the employ of this particular firm and as far as I know they quit doing business with them after I left, terminated my employment.

Q. When did you terminate your employment?

A. In September of 1952, I believe.

Q. That was about the time you made this automobile trip with Mr. Elliff?

A. It was a year before, I am sorry, 1951.

Q. 1951. Now you speak of your employment. Did you mean your employment by Coast Range?

A. No. I was never employed by Coast Range.

Q. I see. You mean your employment by Twin City then? A. No. Brown's Trading Company.

Q. Was that a predecessor of Twin City Company?

A. That's right. Let's see, my dates are getting hazy. I am just a year—I am sorry.

Q. Correct them; go ahead. [480]

A. It was 1950 that I left Brown's and in 1951, in 1951 I was with Twin City.

Q. In 1950 there wasn't any Coast Range Lumber Company, was there?

A. '50—1951, I believe that—what do you want?

Q. I am just asking you whether there was any

(Testimony of Howard Collins.)

Twin—whether there was any Coast Range Lumber Company in 1950, if you know?

A. 1950, I don't know.

Q. You had never heard of it at that time?

A. As far as I know, I had not.

Q. Now then you were in the employ of Twin City as a buyer and seller of lumber for it?

A. That's right.

Q. At the time when Twin City—I mean at the time when Coast Range Lumber Company ceased business, weren't you?

A. I don't remember the date that Coast Range ceased business, the year.

Q. It was during 1952, wasn't it?

A. I don't know.

Q. I see. You didn't keep any track of that account at all?

A. There was no reason for me to keep track of that account.

Q. I am not asking you whether there was any reason for it, I am asking you if you did.

A. No, I didn't. [481]

Q. Now then, in April of 1953 in Los Angeles you attended a meeting in Mr. Hunter's house, I think you told Mr. Shapro, the meeting at which Mr. Elliff was present?

A. That's right.

Q. Along with Mr. Hunter. How long did that last?

A. Well, actually the business part of it probably didn't last very long, although Mr. Elliff was there most of the afternoon.

(Testimony of Howard Collins.)

Q. Weren't you present at all times during this discussion?      A. No, I was not.

Q. You say that Mr. Elliff was present all afternoon?

A. He was swimming and it was just a nice day and it was just a nice social more than anything else.

Q. And you were not with Mr. Elliff and Mr. Hunter all of the time that Mr. Elliff was with Mr. Hunter, is that right?      A. That's right.

Q. How long a time did you spend with them during that period?

A. Oh, probably an aggregate of a half hour, three quarters of an hour, and during that period many things other than business were discussed.

Q. I assume. And during the time that you were there some business was discussed, is that right?      A. That's right.

Q. And this occurred in April of 1953? Now at that time Mr. [482] Elliff was in partnership with Mr. Hodes, was he not? At the time of this meeting?

A. I believe that was the case. I am not positive.

Q. Did the Twin City Company have an office in San Francisco at that time?

A. That is right, sir.

Q. And you were one of the two men in charge of that office, weren't you?      A. That's right.

Q. Along with Mr. Ramsay?

A. That's right, sir.

(Testimony of Howard Collins.)

Q. And that was the situation also at the time of this automobile trip, wasn't it?

A. That is right, sir.

Q. Yes. Did you pay no attention to the dealings of Twin City Company with Mr. Elliff's partnership, that is, the Elliff-Hodes partnership?

A. As long as his accounts receivable were paid that is all we were interested in.

Q. May I have Exhibit 12?

I am showing you Plaintiff's Exhibit 12, which is a photostat of the Twin City Company's account, open account, with Abbott Lane Company. Have you ever scrutinized the Twin City account with Abbott Lane Company before?

A. We have—all we have access to actually is a weekly [483] statement which shows—it doesn't show this in aggregate, it just shows the current situation of our accounts receivable.

Q. Tell me whether Mr. Elliff's partnership—and I refer to the Elliff-Hodes partnership—whether his account with your company ever was current during the time that he was in partnership with Mr. Hodes under the name of Abbott Lane?

A. Well, I am not an accountant.

Q. Well, I am asking you the question, you can always say you don't know. But you don't know?

A. No, I don't.

The Court: How long did the Hodes-Elliff partnership exist?

The Witness: I don't know, sir.

Mr. Jacobs: I think the testimony has been, your

(Testimony of Howard Collins.)

Honor, that it started in November, the 1st and was wound up on the 20th or 28th.

Mr. Shapro: 20th of May.

Q. (By Mr. Jacobs): I know it was the 20th, I think Mr. Baum so testified.

Now during that period of time, did you not keep track of whether they owed you money and were paying it regularly?

A. We knew they owed us some money, but as long as they were paying on account——

Q. Regularly?

A. We have a number of accounts that do that.

Q. Weren't they frequently delinquent?

A. What do you mean by "delinquent?"

Q. I mean did they always pay when payment was due or did they not, as a matter fact, frequently fail to pay when due?

A. I don't know whether it was frequently or not. But I do know this, that we have a number of excellent accounts and we continue to sell them when their payments are past due.

Q. Didn't you keep track of that account?

A. Sure. We kept track of it as long as the money was coming in on it.

Q. Wasn't it coming in on this account to your satisfaction?

A. It was coming in on account, that is right.

Q. And you were satisfied with the experience of Abbott Lane, were you?

A. We thought perhaps they could come in



(Testimony of Howard Collins.)

faster, but that didn't mean that the account was bad.

Q. Did you make any investigation to discover why it wasn't coming in faster?

A. I didn't personally.

Q. You didn't personally. Was any made to your knowledge?

A. I don't remember. I think during the general course of business probably we asked Mr. Elliff how things were going along. If that is what you mean by an investigation, I think probably the answer would be yes. [485]

Q. Was that the only investigation that you know of that was made to discover why payments weren't coming in faster?

A. Mr. Ramsay made a trip down to San Jose sometime along about this period—but I don't remember the date—for the purpose of finding out how the money was coming along about the accounts receivable. But I don't know the dates.

Q. He didn't tell you anything about his conclusions?

A. Well, he certainly did tell me about the conclusions.

Q. What did he tell you?

A. That particular investigation revealed that the accounts were good. As a matter of fact, Mr. Baum told him——

Q. Wait a minute. Was this during April of '53 or was it during September?

A. I don't remember whether it was April or

(Testimony of Howard Collins.)

September. That was the only investigation that we had.

Q. Now the only conversation that you heard during this Los Angeles meeting at Mr. Hunter's house regarding Mr. Elliff's financial affairs, as I understand your testimony, the only conversation you heard that you can remember on that subject was a statement by Mr. Elliff that things were coming along all right, or words to that effect, is that correct?

A. No. He mentioned Coast Range, that came up.

Q. What did he say had happened to Coast Range?

A. He said that Coast Range, part of it he was going to charge up to experience, that he has sustained a loss in it; [486] but as far as, to the best of my knowledge is, no mention was made as to what extent that loss was.

Q. You mean the amount of the loss?

A. The amount of the loss.

Q. Is it your testimony that you heard him say nothing during the part of that interview, that when you were present you heard him say nothing regarding any indebtedness to his mother-in-law?

A. I didn't hear any conversation like that whatsoever.

Q. And am I correct in understanding your testimony to be that you were not in earshot of Mr. Hunter and Mr. Elliff except during a small part

(Testimony of Howard Collins.)

of Mr. Elliff's visit to Mr. Hunter which lasted all afternoon?

A. As I mentioned, that was a social meeting.

Q. Just a moment. Let's get an answer to that question. Except for that brief period, you were not within earshot of those two gentlemen, you didn't hear what they were talking about, am I right?

A. That is right, sir.

Q. Yes. Now if I interrupted any other answer of yours, well please proceed with it, and give it to us.

A. I haven't any statement—I got mixed up on years.

Q. Well, you are not entirely sure during what year this meeting at Mr. Hunter's house occurred?

A. Sure, that was 1953. [487]

Q. And are you quite sure that it occurred in April?

A. It occurred in the Spring, April or May.

Q. Or May? A. Yes.

Q. Do you remember the day of the week when it occurred?

A. I believe it was on a weekend; I believe it was on a Sunday.

Q. It was on Sunday, or is that your testimony?

A. I believe it was on Sunday.

Q. I see. Does Sunday, May 3rd appear to you to be about right?

A. That sounds about right, sir.

Mr. Jacobs: No other questions. That is all.

Mr. Shapro: No further questions.

(Testimony of Howard Collins.)

Mr. Robert Jacobs: No questions.

(Witness excused.)

The Court: We will take a recess.

(Recess.)

WILLIAM W. RAMSAY

a witness on behalf of the defendants, sworn.

Direct Examination

Q. (By Mr. Shapro): State your name, please?

A. William W. Ramsay, R-a-m-s-a-y.

Q. And what business are you now connected with?

A. I am in the lumber business, partner in Twin City Lumber [488] Company.

Q. And were you connected with Twin City Lumber Company or Twin City Company, its predecessor, in 1953?      A. I was.

Q. And continuously since?      A. Yes, sir.

Q. You know Mr. Elliff who testified here?

A. I do.

Q. Do you recall—and only answer this question yes or no, as the case may be—do you recall participating in a conference at the office of Twin City Company in San Francisco in the latter part of August, '53?      A. Yes, sir.

Q. Do you recall who was present at that conference?      A. I do.

Q. Who was, please?

A. Mr. Elliff, Mr. Baum, Mr. Hunter, Mr. Collins and myself.

(Testimony of William W. Ramsay.)

Q. Was the financial condition of Mr. Elliff discussed at that conference?

A. The financial condition of Mr. Elliff was discussed.

Q. Will you tell the Court please what was said by the parties to the conference as best as you can recall and all of it concerning the financial condition of Mr. Elliff?

A. I was in and out of the conference due to other business that was going on, Mr. Shapro. However, I was also in part of [489] it as well and heard some of the discussion which went on between Mr. Elliff, Mr. Baum and Mr. Hunter.

They were the three main participants therein. Mr. Baum and Mr. Elliff were reasserting the very thing that they had told you and all of us many times, that their business was in a sound condition, that their accounts receivable were slow, but that they were not worried, and that we had nothing to be worried about whatever.

They were seeking any possibility of any type of a new arrangement that might be made at that time, as well. I did not participate in that part of the discussion, however.

Q. In other words, after the subject of a new arrangement was mentioned, you were no longer in the room?

A. No, sir, I was not.

Q. And have you given the Court, Mr. Ramsay, the entire substance of the conversation to the extent in which you participated in it in the latter part of August of 1953 in the Twin City office, so



(Testimony of William W. Ramsay.)

far as it referred to the financial condition of Elliff?

A. Yes, sir, that is true.

Q. Now, do you recall a meeting in the latter part of September at the office of Pine Supply in San Jose? A. Very well, Mr. Shapro.

Q. During that week, the week in which this meeting took place, were you down there more than once? [490]

A. Yes, I was there, I think almost continuously every day that week. There might have been one day that I was not there, I don't recall, but I think every day that week.

Q. And on how many of those occasions was Mr. Baum present?

A. I believe that Mr. Baum was present at one time or another every day that I was there.

Q. Do you recall an evening during that week?

A. Yes. The first day that I was down there was on a Monday, and after refreshing my memory, I think it was September 28th, and we worked until seven or eight or nine o'clock at night that night.

Q. Who was there?

A. Mr. Elliff, Mr. Baum and myself.

Q. Will you tell the Court what was done and what was said substantially by each of you at that meeting?

A. We went through the records that were available at Pine Supply Company at that time. We checked all of the accounts receivable. I made in my own handwriting a worksheet on an accountant's tabulation form about so big (indicating).

(Testimony of William W. Ramsay.)

I listed all of the accounts receivable and their status as to the amounts they owed and how far they were behind. We ran a total off of those accounts receivable on a tape.

We have heard an awful lot about this disappearing tape——

Q. What happened, do you know? Do you know what happened to it? [491]

A. Yes, sir, I certainly do. I took both the worksheet and the tapes when I left that night and brought them back to our office. They remained in my possession in the office until after the note was signed. Then I disposed of them because they were of no further use to us or to me and I thought they were of no value.

Getting back to the other part of it, we ran a tape on the accounts receivable, we then went through his accounts payable and ran a tape on those. I believe it was the following day. Now it might have been earlier in that afternoon that we went out and actually made a physical check of the inventory in the warehouse. It could have been that same day, I don't remember for sure.

But at least we made a physical check of the inventory and totalled that.

I, of course, had the figure from our Los Angeles office as to what was remaining in the warehouse. So I knew what that was.

There were some other items in the warehouse which were not under the warehouse agreement. By that I mean Mr. Elliff's own physical warehouse.

(Testimony of William W. Ramsay.)

I cannot tell you at this time what the value of that was because I did not check his invoices from the suppliers that shipped that. But it was material that we had not shipped.

One of them I remember very specifically was some items [492] of moldings and the reason why I remember that very specifically was that it happened to come from a concern from whom we had formerly shipped molding to Mr. Elliff.

I was quite surprised to see material from one of our suppliers shipped direct to him. What the value of those moldings were, I don't know.

He had some door jambs in there that he had got someplace else. And where he has testified that there was only a few pieces of plywood, I didn't count them physically, but there was quite a large pile of plywood sitting on the floor. It was plywood which we had not shipped. He had purchased that from some other source.

As far as the accounts payable are concerned, I say we ran a tape on that. Now I am searching strictly from memory on this, Mr. Shapro, because I do not have those worksheets.

But I reported those figures to Mr. Hunter and also discussed them with Mr. Collins. To the best of my recollection there was roughly twenty-five to \$26,000.00 worth of material and inventory at the warehouse.

There was somewhere in the neighborhood of twenty-four to \$25,000.00 in accounts receivable.

There was something between eleven and \$12,-

(Testimony of William W. Ramsay.)

000.00 accounts payable on accounts other than Twin City Lumber Company. I would like to make one statement at this time if I may with reference to the accounts receivable. [493]

Mr. C. Huntington Jacobs: If your Honor please, may we have that testimony by question and answer?

The Court: Yes, please.

Q. (By Mr. Shapro): Mr. Ramsay, you have given the Court the figures from your recollection as to the total of accounts receivable and of inventory and also of the accounts payable other than your own.

How much did he, Elliff, owe Twin City at that time?

A. At that time it was \$28,116.00 and some odd cents.

Q. Have you given to the Court now the entire substance of what was said and have you told the Court all that was done by you, Mr. Elliff and Mr. Baum on this evening meeting at the end of September 1953 at the Pine Supply Office?

A. I think so, sir.

There was a discussion, a very brief discussion with reference to his other assets, which were the furniture and fixtures.

I think he had a truck and I believe there was a fork lift that he had. He had an equity in both the truck and the fork lift.

As I recall, those were on a conditional sales contract.

(Testimony of William W. Ramsay.)

I don't remember the figure of what we arrived at as the value of those other assets.

Q. Do you recall, Mr. Ramsay, any mention being made in this conversation concerning any particular accounts payable by name? [494]

A. No, sir, I do not.

Q. Now Mr. Ramsay, you recall, do you, a meeting with Mr. O'Connor's office in San Jose?

A. Yes, sir.

Q. And do you recall a meeting in Mr. Pasquini's office? A. Yes, sir.

Q. Both of those in the early part of October, '53? A. Yes, sir.

Q. Which was first in point of time?

A. Mr. O'Connor.

Q. And what is your best recollection as to the date of that meeting?

A. I believe that was on Tuesday, October 6th.

Q. And who was present?

A. Mr. Baum, Mr. Elliff, myself and Mr. O'Connor.

Q. And will you tell the Court from your recollection exactly what was said by the parties at that meeting, including yours?

A. My recollection of exactly what was said is rather hazy. I recall that I went up to Mr. Pasquini's office with Mr. Elliff and Mr. Baum to get the note drawn up that we had been discussing.

Mr. Pasquini for some reason or other was not available. It seems to me that he had left word with



(Testimony of William W. Ramsay.)

his stenographer that Mr. O'Connor could take care of it just as well. [495]

Now I don't know for sure, but at least we saw Mr. O'Connor. And as nearly as I can recall, Mr. Shapro, we explained to Mr. O'Connor briefly what was required, that we wanted a promissory note in conjunction with Mr. Elliff's business in the Pine Supply Company.

We discussed the terms of the note and the way in which the payments were to be carried out.

There was some discussion at that time as to what payments Mr. Elliff could or could not meet.

Mr. O'Connor asked some questions about the note and how to draw it up. Very frankly, that is all that I can remember with reference to that conversation.

Q. Was anything said about a trust agreement at that meeting?

A. Mr. Shapro, I can only say that I do not recall of any conversation with reference to a trust agreement at that time.

Q. Now, the meeting in Mr. Pasquinelli's office took place when?

A. I believe that was two days later, on Thursday October 8th, if I recall correctly.

Q. And who was present?

A. Mr. Baum, Mr. Elliff, myself and Mr. Pasquinelli.

Q. Will you give the Court the substance of what was said at that meeting by the various parties?

(Testimony of William W. Ramsay.)

A. We were interested in obtaining this promissory note from [496] Pine Supply Company with Mrs. Lannin's guarantee thereon. We had made——

Mr. Jacobs: Just a moment.

Q. (By Mr. Shapro): Is this what was said or not? You are supposed to be telling the Court what was said at this meeting.

A. I have a very hazy recollection of anything that was said at this meeting. I know that it has been testified before that a discussion was made of the trust agreement. I very frankly have no recollection of entering into a discussion of this trust agreement whatsoever.

I cannot deny that in my presence that if it were discussed that I would have voiced an opinion or put in my two cents worth.

But I do not remember participating or taking an active part in the discussion of this trust agreement whatsoever on that date.

Q. Why were you there at that meeting, I am referring to the meeting at Pasquinelli's office?

A. You mean at San Jose?

Q. San Jose, yes.

A. I went down to get the note.

Q. The note. The terms of this, as I understand your testimony, were discussed with Mr. O'Connor two days before?

A. Yes, sir, but—— [497]

Q. But I mean the note wasn't delivered or shown to you on the date of the O'Connor meeting?

A. No. Mr. O'Connor only made some notes and

(Testimony of William W. Ramsay.)

a rough draft. And this, as I said, made the second time that I went down there to get the note.

I had been advised in conjunction with this note there was a trust agreement to be drawn up and when the trust agreement was obtained, we were to contact Mrs. Lannin.

Q. Who told you that?                   A. Mr. Elliff.

Q. When and where?

A. I cannot tell you exactly, but I believe it was on Monday October 5th, the day before the note was drawn up. Now it might have been the same day, I mean the same day that we saw Mr. O'Connor. But I couldn't swear to that.

Q. Mr. Ramsay, when did you first hear of a note by Mr. Elliff and a guarantee thereon by Mrs. Lannin?

A. Mr. Elliff called me at my home. Therefore, I believe it must have been on a Saturday morning, which would make it October 1st or October 2nd, 1953.

As I have already told you I had been down there most of that week, many discussions had gone on.

Mr. Elliff called me, and as nearly as I can recall his words, he said this: "Bill, we have been so close to the forest we haven't been able to see the trees. We have a very [498] easy solution to this whole matter. I have discussed it with—" he called her Pearl—"And she is agreeable to co-signing a note if you will accept the promissory note and turn over the warehouse receipts to her."

(Testimony of William W. Ramsay.)

Q. And what reply did you make, if any, to that?

A. I told him that I would immediately get in touch with Mr. Hunter and if it was agreeable with him, we would proceed on that basis.

Q. And what is the next thing that occurred in point of time thereafter, as far as you and Mr. Elliff were concerned?

A. Well, I believe then it was the following Monday that I called Mr. Hunter. I got him at his home, I believe.

I discussed the matter with him. I believe it was the following Monday, Mr. Shapro, the 5th of October.

Q. That you talked to Mr. Elliff about it?

A. Yes. I think I went to San Jose on that date, But I am not sure whether it was that date or the following day.

Q. Did you ever see the trust agreement, which is in evidence here as plaintiff's Exhibit No. 7?

A. I have not seen this trust agreement since this has all come up. I cannot deny definitely that I did not see this trust agreement prior to this time. I can only swear that as far as I know I do not recall having seen it.

Q. Now, Mr. Ramsay—

The Court: You mean you say you never saw that trust [499] agreement before this trial?

The Witness: As nearly as I can remember, your Honor, no, sir.

Q. (By Mr. Shapro): Mr. Ramsay, you had a

(Testimony of William W. Ramsay.)

meeting with Mr. Elliff and Mr. Baum at the Bermuda Palms restaurant in San Rafael?

A. Yes, sir.

Q. Do you remember when that was?

A. I think that was a Thursday night, October 8th.

Q. And was anyone but the three of you present at that meeting?           A. No, sir.

Q. Did you receive any papers from Mr. Elliff or Mr. Baum at that time?

A. Did I receive any papers from them?

Q. Yes.           A. No, sir.

Q. Did they hand you any papers to read?

A. Yes, they did.

Q. And who handed you what document, do you recall?

A. I honestly do not remember who it was that handed them to me. I presume it was Mr. Elliff.

Q. And what document was handed to you?

Mr. Jacobs: I object to his presumption your Honor. That is not testimony, if your Honor please. "I presume it [500] was Mr. Elliff," I move it go out.

Mr. Shapro: I have no objection.

The Court: Well, Mr. Baum and Mr. Elliff were present, weren't they?

Mr. Jacobs: Yes, sir.

The Court: Was it one of the two persons?

The Witness: Yes, sir, it was one of the two persons.

Q. (By Mr. Shapro): One of the two?



(Testimony of William W. Ramsay.)

Mr. Jacobs: Well——

Q. (By Mr. Shapro): And what document was handed to you at that time?

A. I know very definitely, Mr. Shapro, that the note was there at that time. Now, Mr. Elliff has testified that he also gave me a copy of the trust agreement. I can't recall having read that trust agreement, but I cannot positively deny it that I did not see it at that time. But I do not remember it.

Q. Did you receive a copy of it at that time to keep? A. No, sir, I did not receive one.

The Court: Weren't you interested, Mr. Ramsay, as to how the payments were to be made on this note?

The Witness: No, sir——

The Court: Not a bit. What were you there for, then?

The Witness: The payments on the note, your Honor, were set forth in the note. [501]

The Court: Weren't you interested as to how those payments were to be made?

The Witness: Mr. Elliff had assured us that he could meet the payments that were on the note.

The Court: Now, Mr. Ramsay, I am asking you some questions. They are important questions and I want you to answer them.

The Witness: Yes, sir.

The Court: If you don't want to answer them, don't answer them. But I am suggesting that you do.

(Testimony of William W. Ramsay.)

Weren't you interested in how these payments were to be made on this note?

The Witness: Yes, sir, I was interested.

The Court: Weren't you interested in the source from which the payments were to come?

The Witness: I knew the source from which the payments were to come, your Honor.

The Court: What was it?

The Witness: From the proceeds of the income of the business.

The Court: Well, as provided in the trust agreement?

The Witness: No, sir.

The Court: Well, where?

The Witness: Just in the normal course of the business, sir. [502]

The Court: Go ahead.

Q. (By Mr. Shapro): Mr. Ramsay, did you suggest at any time to Mr. Elliff or Mr. Baum the necessity of or the requirement for the trust agreement? A. I did not.

Q. In 1954 you, meaning Twin City, did not sell any merchandise to Mr. Elliff, did you?

A. Not as I recall we did not.

Q. Did you have any information at that time concerning his financial condition; did you receive it from any source? A. In 1954?

Q. Yes.

A. Well, the only information that we had—it was rather roundabout—the information to the effect that he had been securing stock. We knew about

(Testimony of William W. Ramsay.)

some stock that he had been buying from—we didn't know at that time the name of the firm—but from a relatively large plywood corporation on an open account.

Q. And you got that how, that information?

A. I frankly can't tell you exactly how we got that, Mr. Shapro. In our business we have people—people talk and you learn things through underground channels that occurred.

Q. Did you, Mr. Ramsay, at the meeting in Mr. Pasquinelli's office discuss with any one of the other three gentlemen present, namely, Mr. Pasquinelli, Mr. Elliff or Mr. Baum the subject of a necessity for a notice to be given creditors of [503] the trust agreement?

A. I recall that that subject came up. I believe it was Mr. Pasquinelli who brought it up. He mentioned under some legal code or something like that that should be done.

As far as I recall nothing else was discussed on this subject. I recall that. I do not recall that there was anything further in the way of discussion on the subject other than that matter.

The Court: Well, Pasquinelli said it should be done, what did you say?

The Witness: I didn't voice an opinion on it one way or the other.

The Court: Did anyone?

The Witness: I do not recall whether anyone said anything about it at all. I know that it was

(Testimony of William W. Ramsay.)

generally decided at that time that there would be no notice given to creditors.

Q. (By Mr. Shapro): You said it was generally decided, by whom?

A. By Mr. Pasquinelli, Mr. Baum and Mr. Elliff.

The Court: And not you, Mr. Ramsay?

The Witness: No, sir. I had no part in that discussion. I was not concerned in that discussion. Mrs. Lannin's guarantee on the note was all the evidence—all that we needed. [504]

Mr. Shapro: You may take the witness.

The Court: This witness is not particularly persuasive to me, if you want to save time.

Mr. C. Huntington Jacobs: Yes, your Honor. I will merely bring out one or two points.

### Cross Examination

Q. (By Mr. C. Huntington Jacobs): Mr. Ramsay, you have told Mr. Shapro and the Court that you had no present recollection of ever having seen this trust agreement before this trial?

A. Yes, sir.

Q. Now you were examined under Section 21-A of the Bankruptcy Act by myself in the presence of Mr. Robert Jacobs and Mr. Ehrkenson before Referee Abrott in his office in Oakland, were you not?

A. Yes, sir.

Q. And you recall the circumstances?

A. Yes, sir.

Q. Did you not on that occasion give—were you

(Testimony of William W. Ramsay.)

not on this occasion asked the following questions and gave the following answers to them?

I have only one copy, Mr. Shapro.

“Q. Have you never seen the trust agreement that I have just been mentioning?

“A. Yes, sir, I have seen it.

“Q. When did you first see it? [505]

“A. Possibly within a day or so, after it was executed and I left the copy which we have in my hands, but I can say I do not recall the exact date.”

Q. Were you not asked those questions and did you not give those answers to them on that occasion?

A. If that is in the records, I must have said that, yes, sir.

Q. Do you remember now that you did see the trust agreement within a day or so after it was executed, don't you?

A. Mr. Jacobs, I still must say that I do not recall. I definitely have no recollection of it. I do not deny it that I did not see it.

Q. You mean by that, I take it, that you do not deny that you did see it, isn't that what you meant?

A. I deny that I did see it, but I do not recall it.

Q. You don't at this time have any recollection of the matter that was referred to in the testimony that I have just read?

A. The only time that could have been, Mr. Jacobs, would have been at the Bermuda Palms that night.

The Court: But you just testified a moment ago



(Testimony of William W. Ramsay.)

that you did not see the trust agreement at Bermuda Palms, didn't you?

The Witness: No, sir. I said I do not recall having [506] seen it.

Q. (By Mr. Jacobs): Did you take notes of the meeting that you have referred to in Mr. Pasquinelli's office. A. No, sir.

Q. You took no notes at all? A. No, sir.

Q. Did you take notes of the meeting that you have just referred to in Mr. O'Connor's office?

A. No, sir.

Q. Your answer is now you are positive to that effect, you are quite sure you did not?

A. As nearly as I can remember, yes, sir.

Q. I thought you told Mr. Shapro and the Court that your recollection was hazy as to what occurred at those meetings.

Now are you quite positive of what you are saying now, that you made no notes?

A. As far as I can recall, I made no notes, yes, sir.

Q. I have already reminded you of the occasion on which you gave testimony under Section 21-A before Judge Abrott.

Were you not on that same occasion asked these questions and did you not return these answers to them?

The Court: Page and line, please.

Mr. Jacobs: Page 13, your Honor, line 5.

“Q. Did you make any notes on the subject matter of any of these interviews that you had with

(Testimony of William W. Ramsay.)

these [507] people?"—referring to Mr. O'Connor and Mr. Pasquinelli.

"A. I did at the time—business notes, yes.

"Q. Have you still got them?"

"A. I do not."

Q. Didn't you so testify on that examination?

A. If that is in the records, Mr. Jacobs, I must have testified to that extent, yes, sir.

Q. Well now, don't you recall at the present time that you did make notes of these meetings that you had in Mr. O'Connor's office and Mr. Pasquinelli's?

A. Mr. Jacobs, I do not recall. I would have no reason to tell you differently if I didn't. I do not recall of having made any notes.

Q. You say that you kept these—I mean this worksheet of dated accounts receivable?

A. Yes, sir.

Q. And you kept them only until that note had been procured?

A. Yes, sir.

Q. And then you did what with them, destroyed them?

A. Yes, sir.

Q. And you destroyed at the same time the tapes that were taken on that occasion that you have mentioned?

A. That is correct. In fact, Mr. Jacobs, I believe if my memory is correct I destroyed them in the presence of Mr. Hunter. By "destroy them," I mean we threw them away. [508]

Q. When did you do that exactly?

A. It was subsequent, I know, to the time when

(Testimony of William W. Ramsay.)

this October transaction cleared, I suppose that is what you mean.

I believe that it was two or three weeks after that.

Q. And where were you then?

A. In San Francisco in our office.

Q. I see. And you had asked Mr. Hunter what you ought to do with them, did you, on that occasion, and he told you to destroy them?

A. Yes, sir.

Q. When you tell us that you found only eleven or twelve thousand dollars, records of only eleven or twelve thousand dollars of accounts payable, are you giving us a clear recollection or are you giving us a rough estimate?

The Court: I don't believe that was his testimony, Mr. Jacobs.

Mr. Jacobs: I had it on my notes. Maybe I am in error.

The Court: It was only eleven of the twelve thousand dollars of the accounts payable other than that owed to Twin City.

Q. (By Mr. Jacobs): That is what I really should have asked him. Thank you very much.

Other than Twin City? A. Yes, sir.

Q. Now are you giving us a clear recollection or is your [509] recollection hazy on that part also?

A. As nearly as I can recall that is correct. That is something that I actually wrote down and tabulated. I passed that information on to both other parties of our firm.

(Testimony of William W. Ramsay.)

Q. Did you ask any questions as to what other obligations Mr. Elliff owed at that time, if any?

A. No, sir, I did not.

Q. Did you ever on any of these occasions when you came to their place of business during that week, this series of some seven visits, six or seven I think you said, did you ever ask them for any information that they refused to give you?

A. No, sir.

Q. And did you ever ask them for any information that they refused to give you? Did you ever ask them to produce any records that they didn't produce?

A. No, sir.

Q. Now did you on any other occasion than this last occasion when you sat down and compiled this list of receivables, did you on any other occasion than that during these six or seven visits examine the records of this concern?

A. I believe that that was the only time that we actually made a physical check of the records.

Q. The records were there on all other occasions, were they not?

A. They were, as far as I know, they were. [510]

Q. But you didn't examine them on any of these other occasions?

A. No, sir.

Q. There were a great many of them, were there not?

A. I don't believe that there was too many, Mr. Jacobs. The records were available in this book form. They had little tabular sheets on them and the accounts payable were mainly invoices that

(Testimony of William W. Ramsay.)

were due and/or payable that were in a tub file at that time.

And we actually made a check of that plus a few that had been posted already. The records were not voluminous at that time at all.

Q. So that you could easily examine all of them?

Am I correct in understanding you you could easily examine all of them in the three hours on this last occasion that you devoted to that test?

A. It was quite a bit longer than three hours, Mr. Jacobs.

Q. How long do you think it really was?

A. I would say it was seven or eight. We began shortly after lunch and it carried on to seven or eight o'clock at night.

Q. To the best of your knowledge, did you examine all of their records during that seven or eight hours?

A. To the best of my knowledge, I did.

Mr. Jacobs: I think that is all I will ask of this witness. [511]

Mr. Shapro: No questions.

(Witness excused.)

### JOHN W. HUNTER

a witness for the defendants, sworn.

Mr. C. Huntington Jacobs: May I interrupt long enough to say that I have just been handed a notation which has to do with those two certified copies that I promised to produce from the Referee's official records.



(Testimony of John W. Hunter.)

The purport of this is that he wants me to call him when he gets out today. Now he ordinarily adjourns, I believe, about 4:15 or thereabouts.

I take it that this is the only matter which would cause him to call me here in this trial, your Honor.

The Court: That is Mr. Abrott?

Mr. C. Huntington Jacobs: The essence of this is that we won't be able to produce them until tomorrow. That is clear from the notation.

The Court: All right.

Direct Examination

Q. (By Mr. Shapro): Will you state your name, please?      A. John W. Hunter.

Q. And what is your connection with Twin City Lumber Company?

A. I am the executive manager.

Q. And were you the manager of its predecessor, the Twin City Company? [512]

A. I was a partner.

Q. Do you know Mr. Elliff?

A. Yes, I do.

Q. How long have you known him?

A. Well, for a number of years, either '50 or '51. I am not just sure.

Q. Did your company do business with Coast Range Lumber Company?

A. Our former company did, yes.

Q. You sold them merchandise?

A. No. We purchased lumber from Coast Range.

Q. You purchased lumber from Coast Range?

A. That is right.

(Testimony of John W. Hunter.)

Q. Was your company ever a creditor of Coast Range?      A. Yes, it was.

Q. Were you paid in full?

A. We were paid in full.

Q. Do you recall a conference in the Fairmont Hotel in San Francisco in 1951 in which Mr. Elliff and Mr. Collins participated with you and also Mr. Sullivan, I believe?

A. I won't state the date, but I will state we did have a meeting with those people plus Mr. Louis Pasquinelli.

Q. Do you recall a meeting in your home in the latter part of April or first part of May of 1953 at which Mr. Elliff and Mr. Collins and you were present? [513]

A. Yes, and a man named John I. Grove was also there.

Q. John I. who?      A. Grove.

Q. Grove, G-r-o-v-e?      A. That is right.

Q. Do you recall a meeting at the office at the Twin City Lumber Company in San Francisco at which you, Mr. Baum, Mr. Elliff participated and Mr. Ramsay and Mr. Collins participated from time to time?

A. Yes. There was more than one of those meetings.

Q. There was more than one in August of 1953?

A. I don't know about August. I won't say what date the meetings were.

Q. (By the Court): Don't you recall a meeting in August of 1953 in San Francisco?

(Testimony of John W. Hunter.)

A. (By the Witness): Your Honor, I can't tell you the dates. I know that we had a meeting with Mr. Baum and George Elliff on two or three occasions.

Now it could very well have been August or one of those, but I can't state definitely the date.

Q. (By Mr. Shapro): During this period in 1953 and in 1954, who in Twin City Lumber Company was in charge of the extension of credit?

A. I was.

Q. And who during the same period was in charge of making [514] collections for Twin City Lumber Company? A. I am.

Q. You were at that time?

A. That's right.

Q. Now your company extended credit to Abbott Lane in 1952 and 1953, did it not?

A. Yes, it did.

Q. You know who Abbott Lane was?

A. I had never met Mr. Hodes, but I know that he was a trade name that they were supposed to be operating under.

Q. "They" meaning who?

A. Elliff, or Elliff and Hodes.

Q. Hodes. Can you tell the Court on what basis your company extended credit to Abbott Lane?

A. We talked to George Elliff about how they wanted to run—now, they paid their bills—where they discounted and so forth. I asked for a financial statement of Abbott Lane or Pine Supply and of Mr. Elliff himself.

(Testimony of John W. Hunter.)

Q. Did you get them?

A. Yes, I did.

Q. I show you, Mr. Hunter, Defendant's Exhibit E and Defendant's Exhibit I and ask you if those are the statements to which you have just referred in your testimony? A. Yes, they are.

Q. Now as I understand your testimony the basis upon which [515] or the bases upon which your company extended credit to Abbott Lane was your conversations with Elliff that you have told the Court about and those two financial statements?

Mr. C. Huntington Jacobs: That is leading and suggestive, if your Honor please.

The Court: I think it was; sustained.

Q. (By Mr. Shapro): Mr. Hunter, will you tell the Court on what basis or what bases your company extended credit to Abbott Lane?

A. Well, we knew George Elliff and he had kept his word with us in the past. I am quite a believer in going along with people who do what they say they will do.

Plus to substantiate that, we had this statement here of Pine Supply Company signed by Mr. Hodes and Mr. Elliff's signed by him. The combination of the three was our basis for extending them credit.

Q. Now, Mr. Hunter, referring your attention to the meeting in San Francisco at the Fairmont Hotel in 1951, was the financial condition of Mr. Elliff discussed? A. Absolutely no.

Q. Referring your attention to the meeting in your home in the latter part of April or the first

(Testimony of John W. Hunter.)

part of May of 1953, will you tell the Court the substance of the conversation in which you, Mr. Elliff, and Mr. Collins participated?

The Court: This is the meeting in Los Angeles?

Mr. Shapro: Yes, your Honor.

A. Well, the meeting was definitely on a Sunday because we met at the house. We discussed on just what George wanted from us. It was agreed that we would set up a warehouse and upon receipt of each invoice he would pay us thirty per cent of the invoice and we would set the other up in a warehouse account.

Also at that meeting I asked George—as a matter of fact, I am not too sure but what we didn't get these statements at that meeting, but I can't be positive of that—but I know I called to George's attention this amount of unlisted stocks he showed as an asset of \$9000.00 Coast Range.

Q. Are you referring to Defendant's Exhibit I?

A. That's right. And he said, "Well, I know John that that isn't worth that much."

And I said, "Well, George, as far as we are concerned it's not worth anything."

He said, "Well, I may get a little bit out of it."

And then another thing that I asked him about was the lot on Mount Hamilton Road in San Jose at the evaluation of \$5000.00—well, wait a minute, I don't know which one of the two—but I asked him about the value of the two lots and he said that they were certainly good.



(Testimony of John W. Hunter.)

So I know that this statement was in my hands at the time of this meeting. [517]

Q. And this statement again is Defendant's Exhibit I? A. That is correct.

Outside of the terms of how we were going to handle the warehouse and that he would use Douglas Guardian and not Lawrence, why, I would say that that was the extent of our conversation as far as business went.

We sat around and had a beer and so on and so forth and spent most of the afternoon.

Q. Was the subject of any of Mr. Elliff's indebtedness other than what might have been disclosed by that statement, Defendant's Exhibit I, discussed at that meeting?

A. Well, I asked George if this was a correct statement and he assured me that it was.

Q. Now you have testified as to the basis upon which your company extended credit to Abbott Lane.

Will you tell the Court on what basis or what bases you extended credit to Mr. Elliff after this meeting at the end of April or the beginning of May of 1953?

A. Well, on the same basis. As a matter of fact, when George called me and told me that Mr. Hodes was going to get out of the business, he said he was very happy about it due to the fact that since he got into this thing further with Hodes that he wasn't too happy with Mr. Hodes' reputation and thought it would hurt his business at Pine Supply

(Testimony of John W. Hunter.)

and that he just was very happy about it and now he was getting the breaks [518] and things that he needed. And that is what it was.

So we just used the same facts which we have here.

Q. Referring your attention, Mr. Hunter, to a meeting in the San Francisco office of Twin City Lumber Company, do you recall one taking place about August of 1953?

A. I am just sorry, Mr. Shapro, but I can't tell you the date. I know that we certainly had a meeting with those two fellows in that office, yes.

I know on at least one or two occasions there was a meeting with George Elliff in there.

Q. Do you recall a meeting in the San Francisco office at which Mr. Baum and Mr. Elliff and yourself were present and Mr. Ramsey and Mr. Collins were in and out?

A. Yes, I certainly do.

Q. Was there more than one like that in San Francisco?

A. I can't be positive that Mr. Baum was there on more than one. But I think he was there on two.

Q. Will you tell the Court what was said by the various parties in substance at the meeting at which you and Mr. Elliff and Mr. Baum conducted and the one at which Mr. Ramsey and Mr. Collins were in and out?

A. Yes. We had been trying to get an up-to-date current picture on what their business was doing. Mr. Elliff had called in Mr. Baum to take

(Testimony of John W. Hunter.)

off the trial balance and get up a statement and get a clear picture to present to us. [519]

Frankly it had gone on for weeks and we never got it. They came in as always to assure us that everything was all right, that Mr. Baum was having a little difficulty with the records because they hadn't been kept properly, but everthing was fine, and that some of their accounts were slow but all they needed was a good man to factor their interest, and they would be fine.

In fact—well, they told me that if they didn't make arrangements now—this was at one of these meetings, I can't be positive that it is the same meeting—but if they didn't make arrangements with these people, with the people they were dealing with now, that it was more satisfactory that they were going to change to another factory.

If they didn't do that, make better arrangements to get their accounts receivable factored, that they were going to take them to another man to take care of their business.

Q. (By the Court): What do you mean by "factor"?

A. (By the Witness): Well, your Honor, you take an accounts receivable invoice that you have invoiced your customer and you go to the banks and the banks normally advance you sixty to sixty-five per cent on that account receivable.

Q. (By the Court): Sometimes they will be higher and sometimes not that much?

A. (By the Witness): And sometimes they will

(Testimony of John W. Hunter.)

take them with recourse. In other words, if they don't collect them they [520] will be back on them, demand them, the invoicing.

Sometimes they will take them without recourse. And in addition to banks, there are a lot of private individuals who do that same thing that Elliff was doing with a private individual here in San Francisco.

Q. (By Mr. Shapro): Now at the meeting that you have just related the substance of, was any new plan of financing, other than the possibility of increasing the factoring discussed?

A. No. On a couple of occasions, George asked me if we would be interested in factoring his accounts receivable.

I said, "George, no, we wouldn't."

We weren't in that type of business and we didn't have time for it and that we wouldn't be interested.

That was the only thing new that was discussed at that meeting.

Q. Did Mr. Elliff at any time within your recollection tell you anything concerning his personal indebtedness other than what is indicated by the statement that you have in your hand, Defendant's Exhibit I?

A. Absolutely no unless that you count way back when I saw George occasionally at San Jose when he was down seeing Ben Clement and we used to talk about Coast Range and asked him how it was coming out.

George said, "It's all water under the bridge. I

(Testimony of John W. Hunter.)

have [521] got it all beat but it cost me some money.”

Q. You say “way back,” can you put a year on that?

A. Well, it was prior to when we went into this agreement with George.

Q. Was it before May of '53?

A. Yes, yes.

Q. Did you, Mr. Hunter, suggest to Mr. Elliff at any time Mrs. Lannin as a possible guarantor of his obligations?

A. Absolutely no.

Q. In the latter part of September of 1953 you had several telephone conversations with Mr. Elliff, did you not?

A. I have had several, but now again I hate to tie it down.

Q. Well, the evidence before the Court shows that it was during that month that either two or three of his checks bounced?

A. I will say yes, that was the month, yes, that's right.

Q. Will you tell the Court the substance of those telephone conversations, both what you said and he said as far as you recall?

A. That is a very hard question for this reason, that I just don't like to be positive. But I know that conversation must have been that George would have to pay us and pay us as he agreed to pay us.

I will make the statement——



(Testimony of John W. Hunter.)

Mr. Jacobs: I am going to interrupt, if I may, to his testimony. [522]

The witness says "He knows it must have been," so and so, but he can't recall exactly. Can't we have his recollection instead of his inference?

The Court: I think that is correct. I think you should give your recollection of the substance of the conversation or conversations that you had with him.

A. (By the Witness): My recollection then, your Honor, was that I told George that these checks had been returned and that it wasn't right, that he had promised to pay us and we wanted him to pay us.

And whether it was right at this time or not, I don't know. But I know in one case George told me that one of the checks that was returned was due to the fact that one of the checks that he had gotten from his customers had been refused at the bank and that consequently sent our check back.

Q. (By the Court): Well you were considerably agitated at that time about these bad checks, weren't you?

A. (By the Witness): In September?

Q. (By the Court): Yes.

A. (By the Witness): Very agitated.

Q. (By the Court): And you were trying to get him to pay?

A. (By the Witness): That is correct, without qualification.

(Testimony of John W. Hunter.)

Q. (By the Court): You were pretty positive about it, weren't you?

A. (By the Witness): Yes, sir. [523]

The Court: All right.

Q. (By Mr. Shapro): Mr. Hunter, I show you Defendant's Exhibit F which has been received in evidence. Will you look at that please?

A. I know the letter.

Q. You know the letter. You will notice on the face of it in a handwriting other than the handwriting of the body of the letter the date February 3rd, 1954, written.

In whose handwriting is that, if you know?

A. That is mine.

Q. And what does the date represent?

A. I asked myself the same question when I found this letter in a file that I had entitled "Pine Supply" in a drawer halfway buried.

The only thing I could tell myself then and I answer to the Court now is that that was the date that I got this letter.

Q. (By the Court): Where did you get it?

A. (By the Witness): It was in a Pine Supply folder that I had some Pine Supply stuff.

As a matter of fact, your Honor, those checks, those three checks that have been brought up here were there.

Q. (By the Court): That didn't come in the mail you don't mean?

A. (By the Witness): Oh, yes—no, I didn't un-

(Testimony of John W. Hunter.)

derstand your [524] question. I thought you said—I thought you meant where did I get it.

When I found it it wasn't in the regular Pine Supply folder is what I am trying to say, correspondence file. But it came through the mail, yes, sir.

Do I make myself clear to you now?

Q. (By the Court): Well, I don't know. You said you found it in a folder, as I understand?

Q. (By Mr. Shapro): That is recently, you say?

Q. (By the Court): Now you said it came in the mail, where did you find it?

A. (By the Witness): Your Honor, it was mailed to us by someone. I don't know who, I assume it was by George Elliff. Instead of—and I received it, I believe, back in February 3rd, '54—but instead of having it filed, instead of it being filed in the correspondence file with Pine Supply, it was in a folder which I found in my desk here when I made a complete search here last week or so to get the last scrap of anything we might have had concerning this case.

Q. (By the Court): Then you found it recently. Do you recall now whether it originally came in the mail when you first got it or did it come to some other place?

A. (By the Witness): Yes. I am sure it did, it came in the mail.

Q. (By the Court): To you at Los Angeles?

A. (By the Witness): It would have come to the office.

(Testimony of John W. Hunter.)

Q. (By the Court): Or up here?

A. (By the Witness): No, in Los Angeles.

Q. (By the Court): I want you to reconstruct what might have happened. I want to get your memory of it.

A. (By the Witness): Well, your Honor, I got this letter, and I can remember it just as well as well can be.

Q. (By the Court): Let me see that letter again.

Well, do you recall getting it shortly after you had a conversation on the telephone with Mr. Elliff in which there were some harsh words spoken?

A. (By the Witness): Yes, sir, I do.

Q. (By the Court): Well, did you get the letter shortly after that?

A. (By the Witness): Yes.

The Court: All right.

Q. (By Mr. Shapro): Mr. Hunter, I show you Defendant's Exhibit J which is a financial statement of Pearl K. Lannin and ask you if you can recall when that was received by you?

A. I am not positive, but I believe that I received this when I got the note.

Q. And do you recall when you got the note?

A. The note, to the best of my recollection, was delivered to my home by Mr. Elliff.

Q. And your best recollection is that the financial statement [526] in question came with it?

A. That is right.

Q. (By the Court): Didn't you have some in-

(Testimony of John W. Hunter.)

formation about Mrs. Lannin prior to the time you took the note?

A. (By the Witness): Yes, sir, I certainly did.

Q. (By the Court): You weren't relying on this financial statement, were you, but you didn't have one?

A. (By the Witness): No. May I tell you what I did rely on?

The Court: Yes.

A. (By the Witness): All right. I knew Mr. Louis Pasquinelli, knew his reputation, being a member of the board and highly respected in his community.

Mr. Pasquinelli assured me over the telephone that Mrs. Lannin was good for a considerable amount of money, more than the amount of the note that we were talking about.

That was good enough for me.

The Court: All right.

Q. (By Mr. Shapro): Mr. Hunter, did you release the warehouse to Mr. Elliff or Mrs. Lannin before or after your receipt of that financial statement, if you can recall?

A. Well, gee, I am not sure. I think it was after but I don't know.

Q. You are not sure?

A. I am not sure, no. I am pretty sure we wouldn't. The only reason I am pretty sure we wouldn't release it until we [527] got this—but to tell you positively, I can't.

Q. Mr. Hunter, I show you Plaintiff's Exhibit



(Testimony of John W. Hunter.)

7 in this case which is the trust agreement about which we have heard considerable in this case, and ask you whether or not first you ever saw that prior to the time this litigation commenced?

A. I did not.

Q. Did you see a copy of it?

A. I did not.

Q. Did you receive along with the financial statement of Mrs. Lannin——

A. I want to qualify that. I say I did not. I certainly don't have any recollection of that. I don't think I did and I certainly can't remember.

Q. Do you know whether or not it was enclosed or a copy of it was enclosed with the financial statement of Mrs. Lannin and the \$28,000.00 note?

A. I will say that it certainly was not.

Q. (By the Court): Didn't you know that there was a trust agreement being executed, whether or not you saw it?

A. (By the Witness): Yes, I did.

Q. (By the Court): You knew the terms of it, didn't you, that Mr. Pasquinelli was going to be the trustee and would handle the money?

A. (By the Witness): That is right, sir.

Q. (By the Court): You knew about that?

A. (By the Witness): Yes, sir.

Q. (By the Court): And payments were to be paid to Pasquinelli and by him out of such monies that might be received?

A. (By the Witness): Your Honor, I knew

(Testimony of John W. Hunter.)

about that, but whether I knew about it before we got the note or after, I don't know.

The only reason that we made this deal was that Mr. Pasquinelli said Mrs. Lannin had more than \$28,000.00. That is all I cared about.

Now that is the truth of the matter.

Q. (By the Court): But you did know that there had been a trust agreement discussed and that there was one in existence, and that Mr. Pasquinelli was to be the trustee?

A. (By the Witness): Yes, sir. But I don't know whether I learned that before we got the note or right after. It was all right in that close period of time.

But I can't truthfully tell you if it was right before or just after or just when it was.

Mr. Shapro: You may cross examine.

The Court: Do you want to get Mr. Abrott at 4:15? You can't finish with this witness today.

Mr. Jacobs: No, it is impossible.

The Court: All right. Now how do we stand on time?

Mr. Shapro: I think when the subject of such rebuttal as the plaintiff may have when this witness is finished, the [529] defendants will be through.

Mr. Jacobs: I can say that there will be mighty little, if any, rebuttal.

The Court: In other words we will finish tomorrow morning.

Mr. Shapro: Maybe tomorrow morning.

Mr. Jacobs: We can argue this case and complete it with the argument tomorrow, I think, without any doubt if your Honor is willing to hear argument.

The Court: All right then. Until tomorrow morning at ten o'clock.

(Thereupon this hearing was adjourned until 10:00 o'clock a.m. of Tuesday, November 29, 1955.) [530]

Tuesday, November 29, 1955

10:00 A.M.

Mr. C. H. Jacobs: I now have the exhibits that I mentioned yesterday, if your Honor please, and they, each of these in this group of copies of the Referee's Register is separately certified.

The Court: Is what?

Mr. C. H. Jacobs: Is separately certified.

The Court: All right.

Mr. C. H. Jacobs: So that I will simply offer them as plaintiff's next in order.

The Court: All right. Exhibit 20.

(Whereupon the group of minute book entries in matter Bankrupt No. 43322, George F. Elliff, received in evidence and marked Plaintiff's Exhibit No. 20.)

Mr. C. H. Jacobs: I might mention to the Court that I—I call the Court's attention to the fact that they show only 12 hearings here in this District. The hearings, as your Honor will observe, in several instances, concluded in both examinations and proceedings relevant to the Lannin claim, so that

I was required to attend here in this District on only 12 occasions where I thought that I attended on 14. These do not naturally cover the Los Angeles hearings.

Now, in this list of claims, which I have also [531A] received certified by Judge Abrott, I find an error in respect of the claim of Pearl K. Lanin, which I have examined and which is actually in amount approximating 16,000 odd hundred dollars.

Mr. Shapro: It should be \$16,784.98.

Mr. C. H. Jacobs: \$16,784.98. I think we can stipulate to that.

Mr. Shapro: Yes. It is a typographical error, your Honor.

Mr. C. H. Jacobs: We will offer it subject to that correction.

The Court: That is a list of claims?

Mr. C. H. Jacobs: Yes, your Honor.

The Court: Exhibit 21.

(List of claims received in evidence and marked Plaintiff's No. 21.)

The Court: While we are on the question of claims, not being familiar with bankruptcy procedure as you gentlemen are, you say that the time expired normally for filing of claim by Twin City but there was some possibility of that being extended. To what were you referring?

Mr. C. H. Jacobs: It has reference to the same section that Mr. Shapro mentioned.

Mr. Shapro: 57(n).

Mr. C. H. Jacobs: 57(n). [532]

Mr. Shapro: May I read it to your Honor?

The Court: Yes.

Mr. Shapro (Reading):

“Except as otherwise provided in this title, all claims provable under this title, including all claims of the United States and of any State or subdivision thereof, shall be proved and filed in the manner provided in this section. Claims which are not filed within six months after the first date set for the first meeting of creditors shall not be allowed: provided, however, that the Court may, upon application before the expiration of such period and for cause shown, grant a reasonable fixed extension of time for the filing of claims by the United States or any State or subdivision thereof: provided further that, except in proceedings under Chapters 10, 11, 12 and 13 of this title, the right of infants and insane persons without guardians, without notice of the bankruptcy proceedings, may continue six months longer.”

Then this is the part that comes in:

“And provided further that a claim arising in favor of a person by reason of the recovery by the trustee from such person of money or property, [533] or the avoidance by the trustee of a lien held by such person, may be filed with 30 days from the date of such recovery or avoidance, but if the recovery is by way of a proceeding in which a final judgment has been entered, against such person, the claim shall not be allowed if the money is not paid or the property is not delivered to the trustee within 30 days from the date of the rendering of



such final judgment, or within such further time as the Court may allow.”

That is the provision to which we were addressing ourselves as an exception.

The Court: In this proceeding, if there was a recovery against Twin City or setting aside——

Mr. C. H. Jacobs: Setting aside——

Mr. Shapro: Under that section, I would say to your Honor, that it would appear—I mean it appears to me that if there were recovery in this action in favor of the trustee on a money basis, that the Twin City would still be in a position within 30 days of the judgment becoming final, and if the judgment were paid within 30 days, to file a claim for it.

The Court: I see.

Mr. C. H. Jacobs: That is, if your Honor found they had any claim against the bankrupt at all on this note. [534]

The Court: I see.

Mrs. C. H. Jacobs: Which is a matter that we will cover in our argument.

The Court: Very well.

### JOHN W. HUNTER

resumed, previously sworn.

### Cross Examination

Q. (By Mr. C. H. Jacobs): Mr. Ramsay, you told us yesterday that in a conversation with Mr. Elliff, which took place, I believe, on May the 3rd of 1954——

(Testimony of John W. Hunter.)

Mr. Shapro: '53.

Q. (By Mr. C. H. Jacobs): —of 1953—thank you, Mr. Shapro—the matter of his real property on Mount Hamilton was discussed. Am I right about that?

The Witness: Your Honor, my name is Hunter. I don't know whether he wants to ask Ramsay.

Q. (By Mr. C. H. Jacobs): Mr. Hunter—I beg your pardon. Thank you.

A. I looked at the statement and started to mention one of those two pieces of property by name, and then I corrected myself and said we discussed the property but I couldn't be positive just which piece it was. We discussed his property values and he said he thought they were worth that much or more. That was my statement.

Q. Now, you asked him at that time, I assume, whether he [535] owned that property free and clear of liens, did you not?

A. I would certainly think I did, Mr. Jacobs.

Q. Didn't he tell you that it was encumbered?

A. If I asked him, he certainly didn't, because the only thing that we discussed—we discussed the statement and I made the statement to the effect that I didn't think there was any value—the \$9,000.00 asset—I believe it was \$9,000.00—it shows in that statement—of his Coast Range stock.

Q. Mr. Hunter, you say that you are certain he didn't if you asked him. You imply you are not certain whether you asked him or not. Can you

(Testimony of John W. Hunter.)

search your memory and give us the positive answer to that?

A. Mr. Jacobs, from that period of time I was positive as anyone can be. I would say that—I mean, I know that I asked him about those values on that statement, yes, sir.

Q. Now, did you make any investigation to discover whether there were liens of record against that property? A. No, sir, I did not.

Q. Not at all? A. None at all.

Q. You didn't cause Mr. Ramsay or Mr. Collins or anybody else to look at the official records of Santa Clara County? A. No, sir, I did not.

Q. Are you quite positive that Mr. Elliff did not tell you [536] in that connection that this property was encumbered by a trust deed in favor of his mother-in-law, Mrs. Lannin?

A. Mr. Jacobs, I am very positive that he did not tell me that.

Q. And you are equally positive that he told you it wasn't encumbered at all—was that your testimony? A. Yes, it is, sir.

Q. Now, all of this grew out of this financial statement that you have referred to—this conversation about this Mount Hamilton property—I mean, you are positive now that you had the financial statement before you at the time you conducted this conversation with Mr. Elliff?

A. Regarding this Mount Hamilton property?

Q. Yes. A. Yes, I am, sir.

Q. When you had your conversation with Mr.

(Testimony of John W. Hunter.)

Pasquinelli regarding the responsibility of Mrs. Lannin, you say you had that conversation with him by telephone? A. That's right, sir.

Q. And you can't remember the date of the conversation? A. That's right, sir.

Q. Can you remember whether it was before or after October the 6th, 1953?

A. No, I can't, but it was in a few days one way or the other. I am sure that it was before we signed the warehouse releases. [537]

Q. You don't recall whether it may have been after October the 8th, 1953?

A. I just answered you, Mr. Jacobs, that I am not sure whether it was just before or just after. I know it was before we signed the warehouse releases. I signed them, I am sure of that, Mr. Jacobs.

The Court: When did you sign those? Did they have any date on them? Do you have them here?

Mr. Shapro: Yes, I have them.

The Witness: I can——

Mr. Shapro: May I show this to the witness?

The Court: Yes. Show it to counsel.

(Counsel examining.)

Q. (By Mr. C. H. Jacobs): Are those documents that Mr. Shapro just handed you, the warehouse releases that you just referred to?

A. Yes, sir.

Q. Now, they don't show, do they, the date on which you personally signed them?

A. I don't know that they do. No. In other words, I don't know whether this date—actually, I

(Testimony of John W. Hunter.)

don't know whether this date is whether Mr. Elliff signed them or whether I signed them. I know that I signed them while I was in San Francisco in the Douglass-Guardian warehouse office. [538]

Q. In the Douglass-Guardian warehouse office. Do you recall the date when you went there?

A. No, I don't, but it was shortly after we got the note, because I know I turned the note over to the Canadian Bank of Commerce.

Q. You got the note from Mr. Elliff, did you not, about the 10th of October, or shortly after——

Mr. Shapro: 11th.

Q. (By Mr. C. H. Jacobs): The 11th, or thereabouts? A. Yes, sir.

Q. So that it would have been after the 11th that you went to San Francisco. Did you go the next day, or how long after that did you go?

A. It was right shortly after that. Mr. Jacobs, because there is a letter here that I wrote from San Francisco with a memo No. 58 to Miss Swanson, returning our copies of these releases.

Q. Now, did you return those copies on the same day on which you signed the originals?

A. I couldn't be positive of that, Mr. Jacobs. I wouldn't say.

Q. Either the next day or the——

A. I wouldn't be positive of that. Certainly within a few days. It could have been the same day.

Q. We can safely say then that you signed the releases on [539] or about the 14th, can we?



(Testimony of John W. Hunter.)

A. I would say give or take a day or two one way or the other.

Q. Of October.

The Court: Why do you say the 14th?

Mr. C. H. Jacobs: Because—I say the 14th because that is the date prior to the date that this memorandum that he sent down to his—to Miss Swanson in Los Angeles——

The Court: The memorandum was dated the 15th.

Mr. C. H. Jacobs: Yes, sir.

Mr. Shapro: Yes, sir.

Q. (By Mr. C. H. Jacobs): Now, does that clarify your memory as to when you had this telephone conversation with Mr. Pasquinelli?

A. No, sir, not any more than it did before.

Q. As a matter of fact, Mr. Hunter, didn't you get your information regarding Mrs. Lannin's responsibility from Mr. Ramsay?

A. I got it from both sources, Mr. Jacobs.

Q. Well, what two sources do you refer to now in that answer?

A. From Mr. Ramsay and from Mr. Pasquinelli.

Q. Did you get it from any other source?

A. No, sir.

Q. So you didn't pay attention to the statement [540] of Mrs. Lannin's—that is, the financial statement of Mrs. Lannin—at all; is that your testimony?

(Testimony of John W. Hunter.)

A. No; no, it certainly is not. May I digress?

The Court: If you want to explain your answer, you may.

A. Yes, sir. When Mr. Ramsay called me and told that Mr. Elliff had made the proposition to get his mother-in-law, Mrs. Lannin, to take care of these notes, and asked if it was all right to take care of the warehouse receipts on the open account—asked me if it was all right—I said, “Yes, if Mrs. Lannin’s statement is all right, and if her financial worth is all right,” and I had heard that it was. To what extent, I had no knowledge at that time, except hearsay. Later, between the date Mr. Ramsay called me and the time that I signed the warehouse releases, I talked to Mr. Pasquinelli, and he told me that Mrs. Lannin was certainly financially responsible and a woman of considerable means.

In addition to that, I feel—well, I know because I rechecked my memory last night, to be honest about it—that Mr. Ramsay went to the Bank of America. He said the man he talked to, Mr.—was Mr. Young——

Q. (By Mr. C. H. Jacobs): Now you are giving us something that Mr. Ramsey told you he did, are you?

A. Well, I know at the time that we had that information and I am sure, if you will read that testimony, I mentioned [541] that I thought we had talked to the bank, in that deposition, and then when Mr. Elliff brought the note down, he had Mrs.

(Testimony of John W. Hunter.)

Lannin's statement and I looked at Mrs. Lannin's statement——

Q. Well, now—— A. And that——

Q. We know that you got this information from Mr. Ramsay prior to October 6, when the note was dated, is that right?

A. No, sir, I didn't say that. I can't tell you just exactly whether it was a day or two before the note was actually signed or the date. I will say that all our information, the note, Mrs. Lannin's statement, Mr. Ramsey's statements to me, were all given to me to satisfy me that Mrs. Lannin's guarantee was good before I signed the releases in the Douglass-Guarandian warehouse office.

Q. I see. But you can't give us the order in which you got this information?

A. No, sir, I can't.

Q. You may have got the information from Mr. Pasquinelli after you had received the financial statement from Mr. Elliff?

A. I would doubt that, Mr. Jacobs, but it is possible.

Q. You may have got it even—the information, from Mr. Ramsay, that you referred to, subsequent to receiving the financial statement?

A. That's possible, yes. [542]

The Court: Well, now, what do you mean by that, got the information? What information from Mr. Ramsay? What information could you get after you got the financial statement?

A. Your Honor, you are asking me that?

(Testimony of John W. Hunter.)

The Court: I am asking you, yes.

A. Yes. I didn't know you were talking to me. I didn't know. I thought you were talking to Mr. Jacobs, sorry.

We could have gone to the bank and verified it, your Honor, is what I had in mind, could have gone to the bank. I don't think we did. I think I got that information before. The only thing I will say I am positive of, and I say it without qualification, that before we signed the warehouses releases—I signed it personally—that we had this information before us. That is just prudent business.

Q. (By Mr. C. H. Jacobs): When did Mr. Ramsay report to you that the note had been executed? Did he ever do so?

A. Well, I am sure he did, but I couldn't tell you the date.

Q. Was it before you received the note from Mr. Elliff?

A. I would certainly think it was, but I couldn't tell you for sure.

Q. Didn't he at that time give you the report that you have referred to about his investigation of Mrs. Lannin's condition? [543]

A. I would certainly think he did, Mr. Jacobs, yes.

Q. And didn't he at that time report the entire transaction to you, everything that had happened in regard to this transaction?

A. I would certainly think he did. If you have

(Testimony of John W. Hunter.)

reference—there was a trust agreement—I would think he probably did. I wouldn't say yes or no. I will say, without qualification, that the main thing we were interested in was the note.

Q. That isn't what I asked you, Mr. Hunter.

A. I am sorry.

Q. I asked you whether he didn't report the entire transaction to you before you ever received these documents from Mr. Elliff.

Mr. Shapro: I am going to object to that, the form of the question, if your Honor please, as calling for the conclusion of the witness.

The Court: I think it does call for the conclusion.

Mr. C. H. Jacobs: I will withdraw it.

Q. What I want to know is what Mr. Ramsay reported to you when he called you on that occasion. You now remember, I take it, that he did call you?

A. Mr. Jacobs, that's been so long ago I can't tell you exactly what he told me on that telephone conversation.

Q. Do you remember his mentioning the trust agreement? [544]

A. I can't say that I do; I can't say that I don't. All I can say is I truthfully don't remember.

Q. Mr. Hunter, when did you first know—when did you first hear of these meetings that took place on October the 6th and October the 8th?

A. Are they the meetings with Mr. Pasquinelli



(Testimony of John W. Hunter.)

and Mr. O'Connor—are those the meetings you refer to?

Q. Yes, when did you first hear they occurred or were going to occur?

A. Frankly, I never heard about the O'Connor meeting until yesterday. Now, the Pasquinelli meeting I heard about—and I heard about it the time it was going on because Bill would call me. At least I don't recollect the O'Connor meeting until yesterday. I certainly don't.

Q. From whom did you hear about them the first time?           A. About these meetings?

Q. Yes.           A. Mr. Ramsay would call me.

Q. Did he call you on this occasion?

A. On which occasion, sir?

Q. In regard to these meetings, reporting about these meetings.

A. To the best of my recollection, Mr. Jacobs, Mr. Ramsay never mentioned having a meeting with Mr. O'Connor. Now, he did tell me that he was at a meeting with Mr. Pasquinelli [545] to draw up the note, I am sure——

The Court: What was that?

A. He did tell me he was in some meetings, your Honor, with George, and I don't know who else—I don't remember exactly—to draw up the note and finalize this deal and that was at the time it was being made.

Q. (By Mr. C. H. Jacobs): You mentioned plurality of meetings—you mentioned more than one. Did he mention more than one in this report?

(Testimony of John W. Hunter.)

A. Mr. Jacobs, he didn't give me any written report. I said it was a telephone conversation. I'm sorry.

Q. I am referring to your telephone conversation.

A. I don't know whether it was one meeting or more meetings. It's just been too long ago.

Q. Now, didn't he, in making that verbal report to you by telephone, tell you what had transpired at this meeting or these meetings?

A. I would say he certainly did; anything he felt was important for me to know.

Q. Now, when did you first see this trust agreement?

A. I don't know when I first saw it. I heard about it. That's for sure. But to tell you when I first saw it, I can tell you, if this is the question you would like to hear me say one way or the other——

Q. Please give us the facts. [546]

A. All right. The facts are that I certainly didn't see it, Mr. Jacobs, until after this deal was completed. No, that I say without qualification. Just when I did see it or—I just don't remember.

Q. When you say you didn't see it, don't you really mean you didn't read it?

A. I mean I didn't see it, Mr. Jacobs.

Q. You never saw the document itself at all until after these warehouse receipts had been released, is that your testimony?

A. That's absolutely correct.

(Testimony of John W. Hunter.)

Q. And you can't remember, am I correct, whether Mr. Ramsay told you before that time what was in that document?

A. He may have and he may not; I don't remember that he did, no, sir.

Q. Now, he may have——

A. He may have. I certainly wouldn't say, Mr. Jacobs, he didn't.

Q. When did you first learn that this October transaction was contemplated, that Mr. Elliff proposed to give you a guaranteed note?

A. Mr. Ramsay called me and asked me about it.

Q. I asked you when.

A. Oh. Just—I don't know the dates again, your Honor. It was after Mr. Ramsay was down there with Mr. Elliff and [547] talked to him, and then Mr. Ramsay called me, and then Mr. Elliff called me, between—after Mr. Ramsay called me, and I think it was—well, it was right at the time Mr. Ramsay was down, when this whole thing was down, in a short period of time, but tell you the date, I can't do it, except for what I heard here yesterday.

Q. When did you first hear that the trust was to be set up, a trust of any kind in connection with this note?

A. Mr. Jacobs, I said that Mr. Ramsay may have mentioned it over the telephone, but I can't say that he did or say that he didn't.

Q. Please distinguish what I am asking now from what I asked before.

(Testimony of John W. Hunter.)

I am asking you now when you first heard that any kind of trust was to be set up in connection with this note transaction.

A. Is your wording "was to be set up"?

Q. Yes.

A. Well, I am sorry, Mr. Jacobs, I don't understand the difference between——

Q. Didn't you know about it in advance?

A. I will have to answer the question to the best of my ability, and that is——

Q. Do you——

A. ——that Mr. Ramsay might have told me on one of these [548] telephone conversations, but I can't say that he did or say that he didn't.

Q. As a matter of fact, Mr. Hunter, wasn't that your suggestion, that the trust be required?

A. Mr. Jacobs, absolutely no.

Q. Now, how did you expect to get paid on this note?

A. We expected to get paid by the terms of the note.

Q. The note itself independently of the guarantee?

A. No, sir, we certainly wouldn't have taken the note without the guarantee.

Q. Did you have any expectation that Elliff would be able to pay that note without the aid of his mother-in-law?

A. Yes, I thought that he had a fighting chance if he paid attention to business and watched his

(Testimony of John W. Hunter.)

accounts receivable and sold people who would pay him promptly.

Q. The last part of that answer I didn't get.

The Court: "And sold people who would pay him promptly."

Mr. C. H. Jacobs: I see. Thank you.

Q. Now, did you at any time during the negotiation of this October transaction promise to continue to supply Elliff with stock in trade?

A. Mr. Jacobs, I don't think we promised him, no. If you want to qualify that word "promise," it might have been discussed. But promises, I don't think we promised anybody anything because it all would depend on whether or not they [549] paid their bills and lived up to their agreements.

Q. Well, did you consider at the time of this October transaction that Mr. Elliff had paid his bills and lived up to his agreements with you?

A. No, sir, I did not.

Q. Well, am I correct in inferring that you had no intention of continuing to supply Mr. Elliff with stock in trade?

A. No, sir, you are not.

Q. Correct me then. To what extent am I wrong?

A. This would apply—I am just speaking from our general practice, not just specifically what might have happened right there, because I don't know anything happened or not—Is that what you want me to tell you?

Q. No. I want you to tell me what you intended to do, if anything, about supplying Mr. Elliff with stock in trade.



(Testimony of John W. Hunter.)

Mr. Shapro: This is after October?

Q. (By Mr. C. H. Jacobs): That is what you intended during this October transaction, during the negotiation of it, to do after it had been consummated?

A. Well, we intended to continue to help him if he showed that he was worthy of our help and if he could pay his bills and was paying attention to business, why, naturally we would like to sell him anything just like we would anybody else.

Q. At the time of this October transaction, you didn't consider, did you, that he was in a position to pay his bill? [550]

A. No—wait now—felt that he was able to pay the bills that he had now, but I didn't know what he would do in conducting his business in the future, Mr. Jacobs. I couldn't say that. That's what I mean when I say it is what his position is and what he does in the future. At that time, I do feel that if he liquidated everything he had, he could have paid everybody off that we knew about.

Q. Mr. Hunter, is it your testimony that you had no knowledge that he owed anybody outside of the business creditors that he had? I am referring to the time of this October transaction.

A. That is true, except the people that showed on that statement. And, to be perfectly honest with you, at that time I had even forgotten about those, too. They had been a very small amount; I think something like \$5,000.00, but I'm not sure.

Q. Now, you knew at that time, did you not, Mr.

(Testimony of John W. Hunter.)

Hunter that he had suffered a financial loss in connection with the Coast Range Lumber Company business? A. Yes, sir. Mr. Elliff told me he had.

Q. And you knew that he was indebted to banks and otherwise in connection with the closing of that business, did you not?

A. No, sir, I did not. In fact, he told me to the contrary.

Q. He did. When did he tell you that?

A. He told me that Coast Range deal, he had written it off [551] and it was paid for and he was away from it.

Q. Well, now, did he say how it was paid for?

A. No, sir.

Q. And you didn't enquire?

A. No, sir. In fact, one of his other former partners told me they had a loss up there, too. Mr. Pasquinelli told me they had a loss up there and he had written it off to experience, too.

Q. Did anybody tell you that Mr. Elliff had paid all of his obligations in cash in connection—all his obligations in connection with the Coast Range Lumber Company closing?

A. No, sir, no one did.

Q. And you didn't enquire?

A. No, sir, I didn't.

Q. I think you said that Mr. Pasquinelli had been a friend of yours for some years.

A. The first time I met Mr. Pasquinelli was at our meeting in the Fairmont Hotel. That has been the length of time I have known Mr. Pasquinelli.

(Testimony of John W. Hunter.)

Q. You had high regard for the gentleman?

A. Yes, sir.

Q. I am referring now again to the time of this October transaction.

A. Yes, sir.

Q. And you never asked Mr. Pasquinelli whether Mr. Elliff [552] was indebted to anybody on account of the closing of the Coast Range Lumber Company's business?

A. I certainly did not. It wasn't a very pleasant subject with Mr. Pasquinelli and he didn't discuss it very much.

Q. You knew that Mr. Pasquinelli had been an associate of Mr. Elliff's in that transaction, in that business, did you not?

A. Yes, sir, I did.

Q. You knew, did you not, that all of the capital of that business had been borrowed from these four associates, Mr. Pasquinelli and Mr. Elliff, and Mr. Solomon, I believe it was, and Mr. Charles Lannin?

A. I didn't know whether it was borrowed, Mr. Jacobs, or they put it in. I didn't know that, no.

Q. You knew it might have been all borrowed; you didn't know whether it was or not?

A. I did not know.

Q. You never asked?

A. I did not.

Q. Now, then, you also knew, did you not, that the account of Mr. Elliff in partnership with Mr. Hodes, the account between that partnership and your company, had never been current, it never had paid the debts on time—I mean, the bills to you on time—you knew that, didn't you? You were the credit manager, I believe you told me. [553]

(Testimony of John W. Hunter.)

A. At what period are you asking this about?

Q. I am talking now about the experience that your company had had with the Abbott Lane partnership.

A. Well, my answer to that, yes, I knew that they were slow paying. But we got every dime from them.

Q. You say you knew you had gotten every dime from them? A. Well, I say every dime.

Q. Are you sure that—

A. It was very close. I think it was a few dollars one way or the other. I knew that they had gone along and paid something on account.

Q. What I am showing you now, Mr. Hunter, is Plaintiff's Exhibit 12, which is a photostat of your own ledger account—that is, of your company—with Abbott Lane; and Plaintiff's Exhibit No. 4, which is the ledger account of your company with Pine Supply Company. You kept track of those accounts, did you not, as the items accrued upon them?

A. I never go to the actual accounts themselves. I do none of the posting or any of that. Every Friday—No, it's not done at my authorization, either. It's done automatically by the book-keeping department. Every Friday I get a list of all of our accounts receivable, aged, and the amount due us. That is every Friday of every week. That is as far as I know about the records.

Q. And when you get your statement regarding the amounts due, [554] you also get on that same

(Testimony of John W. Hunter.)

statement an indication of how long those amounts have been due you, don't you?

A. That's correct.

Q. Now and again you do examine these records, do you not, such as this ledger account, ledger accounts of Abbott Lane and Pine Supply?

A. Mr. Jacobs, I do not.

Q. You never do?                      A. That's correct.

Q. You rely on your bookkeeper to make transcripts from them, summarize—summaries from them and give them to you?

A. Yes, sir. Not only for this business but other businesses.

Q. Did you not know also at the time of this October transaction that Pine Supply Company account had never been current?

A. I knew it was always slow. I wouldn't say it never reached a current point but I knew it had always been slow. I was very well aware of that, Mr. Jacobs, yes, sir.

Q. You also knew that you were holding three dishonored checks, did you not, that had been given to you and credited on the open account but never paid?

A. I knew that we had checks that were returned from this—that Pine Supply had given us, that had gone to the bank and bounced. Some of them we returned back and so they got back. Now, just what they were at that date, I wasn't absolutely aware, but I knew we had some that were refused at the bank. [555]



(Testimony of John W. Hunter.)

Q. Wasn't it by your instructions that these notices of protest that comprise Plaintiff's Exhibit 16 were given?      A. I beg your pardon?

Q. Wasn't it by your instructions that these notices of protest were given?

A. Were given to whom?

Q. Given to Mr. Elliff, among others.

A. No, sir, we got these back from the bank just automatically. I had never seen one before until the bank had sent it back to us. We gave them no instructions whatsoever.

Q. What bank are you referring to?

A. The Canadian Bank of Commerce of San Francisco.

Q. Well, you received copies of the notices that were given, did you not?      A. Yes, sir.

Q. And you personally saw those notices, didn't you?      A. Yes, sir.

Q. And you received those notices, didn't you, prior to this October transaction?      A. Yes, sir.

Q. So that you knew, didn't you, that the six checks had gone to protest?

A. Yes, sir, I knew at one time. I didn't know just how many there were at that particular time.

Q. Didn't you have that in mind in this connection with [556] this October transaction?

A. Didn't I have in mind these checks were refused from time to time?

Q. Yes.      A. Yes, I certainly did.

Q. That they had gone to protest?      A. Yes.

(Testimony of John W. Hunter.)

Q. And did you not telephone Mr. Elliff in connection with these protested checks?

A. Yes, sir, I did.

Q. And didn't you tell Mr. Elliff that he would have to make them good or else?

A. Or else we would stop selling him lumber, if that is what you mean, yes, sir.

Q. And you did order the deliveries of lumber stopped in August, did you not, of 1953?

A. I can't say that I did or didn't. I wouldn't be positive of that. If anybody ordered them stopped, I didn't, Mr. Jacobs.

Q. Well, now, I call your attention to the deliveries shown by the invoices entered on this Exhibit 4, which is the Pine Supply open account, and ask you whether that doesn't refresh your recollection as to what deliveries were stopped.

A. Yes, it certainly does. If it doesn't show on this [557] sheet, why, we didn't make any deliveries. But I think there was one delivery or two deliveries after that. Wasn't there?

Q. Beg your pardon?

A. Wasn't there one or two deliveries after this, after the October transaction?

Q. Well, look at the statement—I mean, look at the ledger.

The Court: There were some deliveries. Let's try to move along. Weren't there deliveries in November?

Mr. C. H. Jacobs: There were some in Novem-

(Testimony of John W. Hunter.)

ber after this transaction. I am talking about prior.

The Court: Yes.

Mr. C. H. Jacobs: Yes.

Q. Mr. Hunter, you never did deliver any of these three checks which were still held by you at the time of the October transactions, you never delivered any of those to Mr. Elliff later, did you?

A. No, sir, I didn't. I might add, if I may—it will help clarify that——

Q. You can explain your answer if you want to.

A. Those three checks that you now have here were found in this same folder, your Honor, as I referred to yesterday. They were in the bottom drawer of my own desk and not where they should have been.

Q. They were still held by Twin City Company, the old firm, [558] were they not?

A. Well, the old or the new, it's just in the office.

Q. They were never mentioned in connection with the reorganization; they were still held by the old firm at the time when this suit began, were they?

A. Our accounting firm came in and made all those book transcripts. I heard Miss Swanson say that account was transferred over. I am sorry, that's the best answer I can give you on that.

Q. In other words, all that you have to give us on that subject is what Miss Swanson said?

A. That's right, because our accountants handled the transfer of the records and so forth, like that.

(Testimony of John W. Hunter.)

I don't go into the books, Mr. Jacobs, I am sorry, I just don't do it.

Q. All right. Now, at the time of the October transaction did you have a report, either verbally or in writing, from Mr. Ramsay, regarding the condition of the financial affairs of Pine Supply Company? A. Verbally, yes.

Q. And when did you get that, how long before this October transaction? A. Just before.

Q. Just before. In other words, late in September, or very early in October and prior to October 6th?

A. It was when Mr. Ramsay was down there checking those [559] records, when I was checking that record the latter part of September or October, I'm not sure.

Q. Where were you when you got it?

A. I was in Los Angeles.

Q. I see. You got it by telephone, is that right?

A. That's right. He might have confirmed it by memo, I don't know that he did or didn't.

Q. Have you looked in your records to see whether you have any memo of that nature?

A. I looked in a Pine Supply file.

Q. You don't find any? A. No, sir, we didn't.

Q. And didn't he report to you that the Pine Supply Company affairs looked to him very shaky?

A. No, he didn't.

Q. He didn't. Did he say they looked very promising?

A. He gave me the facts and I drew my own

(Testimony of John W. Hunter.)

conclusions on it. I draw my own conclusions on the credit of companies. That's my department.

Q. I see. So he didn't express any opinions, but he just gave you information that he had gotten off the books, is that right?

A. I wouldn't say he didn't express an opinion, Mr. Jacobs. I don't know whether he did or didn't.

Q. You don't remember that conversation very well, I take [560] it.

A. Yes, I certainly remember what he told me about the accounts.

Q. Well, let's hear what he told you.

A. Well, he told me——

Q. As you remember.

A. He told me that the accounts receivable plus the warehouse account was certainly a great deal greater than the money owed us.

Q. Did he tell you how much?

A. Yes, he did, and I can quote the facts quoted in court; but if I hadn't heard him, I doubt if I could. And I checked into it to find out what they were. In fact, I have them on a piece of paper here in my——

Q. You got them from subsequent testimony by Mr. Ramsay, is that it?

A. Well—and looking at the records, what was owed us and what the testimony was and so forth. I mean, if you had met me on the street after we had gotten the note, I probably—shortly after I got the note, I couldn't have told you.

Q. Now, between May 15 and September 18,



(Testimony of John W. Hunter.)

1953, Mr. Hunter, you wrote Mr. Elliff a number of letters, did you not?           A. Yes, sir.

Q. Regarding the state of his account?

A. Yes, sir. [561]

Q. And what he ought to do to improve the posture of his affairs?           A. I think I did, yes.

Q. Will you examine this group of letters which constitutes Plaintiff's Exhibit 3 and just tell us whether you recognize those letters as letters which you wrote to Mr. Elliff?

A. Well, without taking the time to read them, I see they are on our stationery and——

Q. And bear what purports to be your signature?

A. I signed them all except those initialed "D.R." which I let the secretary do, which is Denny Ramsay.

Q. If you have any doubts about any of them, would you express it?

A. I don't have any doubts about them, Mr. Jacobs.

Q. Let the letters speak for themselves.

Now, Mr. Hunter, you told us that in conversation with Mr. Elliff on May 3, 1954, you were relying largely on his personal financial statement that you have identified.

A. Mr. Jacobs, I don't believe I said that.

Q. I understood you to. If I am wrong, why, correct me.

A. I had Mr. Elliff's statement and also the other statement on Pine Supply, signed by Mr.

(Testimony of John W. Hunter.)

Hodes. In addition to that, I did rely on George's past performance and honesty. I did say that.

Q. Did you ever make any investigation for the purpose of [562] verifying the items contained in this financial statement, Defendants' Exhibit I?

A. Nothing further than my conversation with Mr. Elliff.

Q. Did you continue to rely on this statement after that interview on May the 3rd, 1953?

A. After this thing got to going, and the accounts were being paid slowly, we continually asked for a new statement on Pine Supply, which we never received.

Q. You also asked for a personal statement of Mr. Elliff, did you not?

A. I don't think so. Now, the letters may say that, but I think when I say "for your statement," I am talking about his Pine Supply statement.

Q. Would you like to take a look at these letters and note the references that they make to his furnishing a personal financial statement?

A. Well, if I did, I did. I say I don't remember it now. If it is in this letter——

Q. I thought that might recall it to your mind.

A. If it is in the letter, I said it, Mr. Jacobs. Which letter is it in? May I see it myself?

Q. There are three of them.

A. Where I ask for personal financial——

Q. There are three of them that I find.

A. Where I say "personal"? [563]

Q. Yes.

(Testimony of John W. Hunter.)

A. Would you mind showing it to me, please?

Q. No. Here's the first one, May 28, 1953.

A. (Reading) "For your information, I will be in San Francisco on Monday and Wednesday of next week. I hope that this time I will be able to see you and discuss your present financial condition."

That doesn't say "personal." It says, "your present financial condition."

Oh, yes. Then it goes on to say:

"\* \* \* a current personal and company financial report \* \* \*"

Q. "If HAC has not asked you to please prepare a current personal and company financial report \* \* \*"

A. That's right.

Q. That was on May 28th?

A. All right. Let's see if there are any more.

Q. Here, you have on June 5, 1953——

A. That's right. That's right.

Q. Then we have on June 17, 1953——

A. You're correct, Mr. Jacobs, yes.

Q. Although you never got that from him, that personal financial statement——

A. Or the company.

Q. ——or the financial statement of Pine Supply Company [564] all that you investigated were the affairs of Pine Supply Company, am I correct in that statement?

A. I wish you would repeat yourself and make it more specific.

Q. You told Mr. Ramsay, as I understand it——

(Testimony of John W. Hunter.)

he went in accordance with your instructions, didn't he, to make this audit of the accounts of Pine Supply Company?      A. That's right, sir.

Q. But you didn't instruct him to make any inquiry into the personal financial affairs of Mr. Elliff?

A. That's correct, sir. Mr. Elliff didn't owe us any money. His company owed us money, and that is what we were primarily interested in, in seeing how his financial position of his company stood.

Q. Now, Mr. Hunter, weren't you aware that Mr. Elliff, at the time we are talking about now, which is the October transaction, weren't you aware that Mr. Elliff was the sole proprietor of this company?      A. Yes, sir, I was.

Q. And weren't you aware that if the company owed you any money, Mr. Elliff personally owed it to you?      A. Yes, sir, I was.

Q. And yet the fact is that you never made any inquiry at all into personal affairs extraneous to the business of this company? [565]

A. That's correct. I thought if we had the information on this company that we would have the information pretty well on him, too.

Q. I am inferring from what you just said—correct me if I am wrong—that you felt that he probably didn't owe anything and probably didn't have anything of any consequence outside of the liabilities that he owed and the assets that he had in this company.

(Testimony of John W. Hunter.)

A. No, I didn't say that, Mr. Jacobs. What I meant——

Q. I know you didn't say it. I am——

A. I didn't mean to infer it. Does that answer your question?

Q. I see. Well now, tell us what you did have in mind about his personal assets and liabilities, if any.

A. I didn't have too much in mind except for what he had shown us originally. We would always like to have a personal statement on any partnership agreement because the person is personally liable.

Q. Yes.

A. Most times it's pretty hard to get. They only give you the one of the business and that's all. No, the reason I wasn't primarily concerned about Mr. Elliff's personal statement was due to the fact that continually from the time that—well, even before Mr. Baum went to work for Mr. Elliff—we had asked Mr. Elliff for a statement. [566]

I knew from the time Mr. Baum was there because we had continually reports from Mr. Baum and from Mr. Elliff that Mr. Baum was working on this and was going to get it for us and *the due* to some of the old records that dated back in the Hodes-Elliff deal that it would—that was all confused and he was having a hard time.

But on not one occasion but on more than one occasion both Mr. Baum and Mr. Elliff assured me that everything was all right, that their accounts



(Testimony of John W. Hunter.)

receivable were slow but they had more money than what they owed, and I wanted Mr. Ramsay to go down there and verify that, to see—since we couldn't get it from Mr. Baum and Elliff—I wanted someone in our company to go down and see.

Q. You weren't curious as to what he might have owed outside of the liabilities of the business?

A. Maybe I should have been, Mr. Jacobs, but I wasn't at that time. I relied on the statement that we got from Mr. Elliff a few months before.

Q. Now, you continued then to rely on this statement.

Then, I take it, that you are still referring to Plaintiff's Exhibit I, insofar as Mr. Elliff's personal affairs were concerned, you continued to rely exclusively on this statement right on down to and including the consummation of the October transaction; am I right about that?

A. That is true, Mr. Jacobs. Don't misunderstand me. I [567] am not changing my mind. I asked—I had written for the—I had written for it, I had written for a new statement, but I had to use this because it was the best information we had.

Q. In place of the failure to give you the new statement that you had asked for, you continued to rely on the old one, am I right?

A. I didn't have any choice except when I finally was able I made the choice to take the bull by the horns and sent Mr. Ramsay down to check on the accounts of the company.

Q. Not to check on Mr. Elliff's personal liabili-

(Testimony of John W. Hunter.)

ties?      A. That's right, Mr. Jacobs.

Q. And you personally made no such check?

A. That's correct, Mr. Jacobs.

Q. You never asked Mr. Elliff about these personal liabilities?

A. Not since the time he originally gave me this (indicating).

Q. "This" being Exhibit I?

A. That's correct.

Now, I answered that pretty hurriedly. I certainly don't—I didn't—. No, I didn't. I was going to say I didn't. I didn't. I am sure I didn't.

The Court: You mean orally?

A. That's right, sir. [568]

Q. (By Mr. C. Huntington Jacobs): And never had any of your associates or your employees make any such inquiry, is that your testimony?

A. To my knowledge, Mr. Jacobs, and not by my instructions, that's my testimony, yes, sir.

Q. Now, at the time of this October transaction did you know where Mr. Elliff had obtained the money with which to buy Mr. Hodes' partnership interest?      A. No, sir, I did not.

Q. Did you ever ask?      A. No, sir, I did not.

Q. At the time when this partnership between Elliff and Hodes was dissolved, on or about the 20th of May, 1953, you were informed of the dissolution, were you not?      A. Yes, sir, I was.

Q. And you were told that it was going to occur before it did occur, were you not?

A. Yes, sir.

(Testimony of John W. Hunter.)

Q. You knew it in advance, that it was going to happen? A. Yes, sir.

Q. And who told you? A. Mr. Elliff.

Q. And when?

A. Once again, Mr. Jacobs, I can't tell you the date but it was prior to when it was done. At least George told me it [569] was prior to when it was done. I had no reason to believe it wasn't. In fact——

Q. Was it in April or was it in May of 1953, can you tell us that?

A. No I can't, Mr. Jacobs. I know that George said that he was pleased that he was going to get out of it, the deal with Mr. Hodes, because he had heard some things that he didn't think would help their business and he would rather have it all alone. He was very pleased about it.

Q. At that time you knew, did you not, that the so-called Abbott Lane Company had an excellent credit rating—not excellent but good.

A. I beg your pardon?

Q. They had a good credit rating, Abbott Lane, as a creditor.

A. I don't think they had been in business long enough to have anyone say that they had a good or a bad one.

Q. Did you know what their rating was?

A. No I did not. I did not. As a matter of fact, I don't know that they had a rating in the red book.

As a matter of fact, I would doubt that they did have one that soon.

(Testimony of John W. Hunter.)

As I understand it, what they told me, the way that I remember the deal, they just started a very short time before it was dissolved.

Q. Well you knew, did you not, that Abbott Lane had been a [570] firm that had been established for some years in the north—that is, in or around Seattle—and had been in business for a considerable number of years up there and then that Mr. Hodes brought it down to California; as a credit man, you knew those things, didn't you?

A. No, I didn't. But you refresh my memory there.

It seems to me that I do remember that George told me that it was a name that had been used formerly by Mr. Hodes. But I didn't know of the details that you just now have given me. No, I didn't.

Q. Did you know anything about Mr. Hodes' personal responsibility at the time of this dissolution?

A. The only thing I knew about is what had been told, that they had—that he was running a business and making money at it.

Q. And didn't you tell Mr. Elliff, George, that if he was going to dissolve this partnership with Hodes or if that partnership was going to be dissolved he would have to put some money, more money into that business?

A. From what I remember of the deal, I think I did. I feel sure I did because he would need some more money in the business.

(Testimony of John W. Hunter.)

Q. And when did you tell him that?

A. I imagine at the time he was telling me it was going to be dissolved or shortly after because that is when I would [571] give it some thought.

Q. The discussion regarding the dissolution of the business also included a discussion of his obtaining—regarding his obtaining supplies from your company, didn't it?

A. Would you repeat that again, please?

Q. Withdraw the question and replace it.

In this same discussion in which he mentioned the intention to dissolve the business or the fact that it was going to be dissolved, in that same discussion you had a discussion with him regarding furnishing him with stock in trade, did you not, after the dissolution?

A. Yes, we discussed furnishing stock in trade to Abbott Lane, and he told us—told me he was going to dissolve and wanted to know if we would continue on the same basis.

Q. And you told him you couldn't, didn't you?

A. I beg your pardon?

Q. You told him you could not.

A. I did no such a thing.

Q. Oh?      A. We did it.

Q. You did continue on the same basis.

A. Yes. I am sure it was right on the same basis.

Q. Well now, this basis that you are referring to—      A. Well, I mean— [572]

Q. Was the May agreement, wasn't it?



(Testimony of John W. Hunter.)

A. That's right, yes, sir. That's right. That is what I wanted to make clear.

Q. And that has just been—. That had just been arranged for in view of the approaching dissolution? A. That's what I wanted—

Q. Did it not?

A. No, I am pretty sure, Mr. Jacobs, that George had discussed with me if we would do the same thing for Abbott Lane. No, I am not positive of that but I am practically positive of it, and if I had a gun at my head I would say we had discussed it because it wasn't anything new.

As I remember it, George wanted to know if we would go ahead and make the deal with Pine Supply just as we were going to make with Lane.

Q. In other words, he wanted to know whether you were willing to enter into this May arrangement and furnish supplies to him as an individual doing business as Pine Supply Company under that arrangement, is that your testimony?

A. That's correct, sir. I think we are saying the same thing.

Q. I think so. Before you had this conversation about your willingness to do that had you ever had any similar arrangement with Abbott Lane?

A. I think it was just in the talking stage. We never had a warehouse set up at that time but we were talking about it at the time that Abbott Lane was dissolved.

I am pretty sure—

Q. You didn't have any warehouse set up, as you

(Testimony of John W. Hunter.)

call it, until after you had this conversation with George Elliff, did you?

A. No, but it had been discussed prior to that. I feel confident that it had.

Q. Now didn't you in the course of this discussion tell him that if you had this warehouse arrangement then it would be possible for you to do business with him as an individual?

A. No, sir. Mr. Jacobs, we were discussing this warehouse setup when there was an Abbott Lane in existence. He just wanted to know if we would do it with Pine Supply the same as we were doing—were going to do with Abbott Lane.

Q. What change did this warehouse arrangement make in your dealings with the Hodes Elliff partnership?

A. Well, we were selling a little bit on open account but George said he had to have more inventory and Hodes didn't want to put any more money into it, and he didn't have enough money to carry the proper inventory, and he wanted to increase his inventory and wanted to know if we would help him. [574]

Q. Didn't you tell him that you would do that on two conditions, if he entered into this warehouse arrangement—

A. Beg your pardon?

Q. Didn't you tell him you would do that on two conditions, one, that he enter into this warehouse arrangement; two, that he put more money into the business?

(Testimony of John W. Hunter.)

A. Mr. Jacobs, the warehouse arrangement had been discussed with the Abbott Lane deal.

Q. Yes?

A. No, I would like to get that point to you clearly.

Q. You have made it. Go ahead.

A. No, the only thing that I would have told him—that I did tell him—because we did it—was that we would do the same thing with Pine Supply as we were going to do with Abbott Lane.

Now, not as a condition I don't believe, but I told him that it was in my opinion—in my opinion he should certainly put some more money into the business—as I remember, it was about two thousand dollars, not very much—to help him carry this thing along.

Q. Now you knew, did you not, that he actually did put \$7,000.00 into that business, approximately, after this conversation that you have just referred to?

A. It seems to me that sometime after, but not right away, it was actually after we set up the warehouse agreement, [575] that George did come to me and tell me that he had put some additional money into that business.

Q. And the amount that he mentioned at that time was \$7,000.00, was it?

A. I can't tell you whether it was or wasn't.

Q. He told you, did he not, where he got that money?

(Testimony of John W. Hunter.)

A. I just can't answer that yes or no. I don't know that he did or didn't.

Q. You can't recall whether he told you that he had borrowed it from his mother-in-law or not?

A. No, I can't say.

Mr. C. Huntington Jacobs: I think that's it.

The Court: Let's take a recess.

(Short recess taken.)

Mr. Robert Jacobs: I have no questions.

### Redirect Examination

Q. (By Mr. Shapro): Mr. Hunter, I show you Defendant's Exhibit I, the personal financial statement of Mr. Elliff, as of April 7th, 1953, and call your attention to the reverse side thereof and a description of real estate and ask you to read it and then tell the Court whether or not that refreshes your recollection with respect to the subject matter about which Mr. Jacobs interrogated you as to your inquiry of Mr. Elliff if there was a mortgage on the real estate.

The Court: What Exhibit are you showing him?

Mr. Shapro: The financial statement, Exhibit I.

The Court: Of Elliff?

Mr. Shapro: Of Elliff, yes, sir.

A. Well, sir, what is your question?

Q. (By Mr. Shapro): The question is, reading this is your memory refreshed as to your inquiry or lack of it as to a mortgage on the real estate at the time you discussed that statement with Mr. Elliff?

(Testimony of John W. Hunter.)

Mr. C. Huntington Jacobs: No mortgage has been mentioned, if your Honor please. I think the only mention of an incumbrance was a trust deed.

Mr. Shapro: Let's call it trust deed. I am sorry.

A. Well my statement was, Mr. Shapro, was that if it showed encumbered I undoubtedly asked him about it. On the one piece of property it says—Mount Hamilton Road, the one acre—it definitely says "Clear."

So I am sure I wouldn't ask him about that.

It shows down here balance owing on the other piece; I might have asked him about that.

Mr. Shapro: I see. No other questions.

Mr. C. Huntington Jacobs: No questions.

I neglected yesterday to offer the transcripts to which I had referred in cross examining Mr. Ramsay. This is a copy of the official record.

Mr. Shapro: As long as it is limited to the items read [577] to the witness, I have no objection to it.

Mr. C. Huntington Jacobs: That's all. And they are marked.

The Court: What portions are there so that we will have no doubt about it? I made a note of one of them, page 13, line 5 was one of them—if that's the same transcript you are talking about.

Mr. C. Huntington Jacobs: Lines 5 to 8. Page 13.

The Court: What is the other page?

Mr. C. Huntington Jacobs: The other I am looking for. The other one is Page 14, lines 15 through 20.

The Court: All right. The portions of the



transcript indicated by counsel may be admitted in evidence. Exhibit 22.

(Transcript in the Matter of George F. El-liff, an individual doing business as Pine Supply Company, Bankrupt, No. 43322, Examination of William W. Ramsay, received in evidence and marked Plaintiff's Exhibit 22, limited to those portions hereinabove designated.)

The Court: All right. Anything further?

Mr. Shapro: Nothing further from this witness.

The Court: Step down.

(Witness excused.)

Mr. Shapro: The defendant rests, your Honor.

Mr. C. Huntington Jacobs: There will be no rebuttal.

The Court: All right.

(Matter continued to 9:30 o'clock a.m. Thursday, December 8, 1955, for concurrent submission of legal memorandum, and for presentation of oral argument.)

[Endorsed]: Filed July 9, 1956.

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[Title of District Court and Cause.]

Thursday, December 8th, 1955

Mr. C. Huntington Jacobs: If your Honor please, the plaintiff and the cross plaintiff offer these memoranda of points and authorities on which we respectively rely.

I speak for Mr. Robert Jacobs to save time.

It seems to me, your Honor, that the salient fact

in this case is the trust agreement. Perhaps I should make that plural and say also the circumstances under which it was executed.

May I ask the Court whether the Court has had an opportunity now to read the trust agreement?

The Court: Yes.

Mr. C. Huntington Jacobs: From beginning to end?

The Court: Yes.

Mr. C. Huntington Jacobs: That trust agreement it seems to me is so important, your Honor, because in connection with the circumstances surrounding the making of it, it is so relevant of an intent to hinder or delay or to defraud.

Consequently the actual fraud of which in part the trustee, the plaintiff, relies.

The evidence of the subject on the circumstances surrounding the making of this trust agreement, of course, includes the prior transactions between the Twin City Company and the bankrupt because of the fact that his insolvency, which had originated with the collapse of the [580] Coast Range Lumber Company in 1952 continued throughout all of his dealings with Twin City that followed that collapse.

They retraced them, as your Honor will recall, by oral testimony and by exhibits through his disastrous partnership with Hodes which concluded in a disastrous settlement he made with Hodes and continued throughout his subsequent dealings with Twin City Company as the sole proprietor of the business as Pine Supply Company.

I think it needs some emphasis that in his settle-

ment with Hodes he parted with any right to the name of—under which the partnership had originally operated—that was——

The Court: Abbott Lane.

Mr. C. Huntington Jacobs: Abbott Lane, thank you, sir.

And Hodes took that, which was the only asset of apparently substantial value for the rest of his net worth—for the rest of the net worth that is, of the Abbott Lane partnership which was a negative quantity as Mr. Baun testified.

The bankrupt paid a substantial sum to Mr. Hodes in one way or the other. That settlement used up the principal value of the real estate that Elliff had previously sold to Hodes.

It also involved an obligation, his paying an obligation [581] to Hodes of some—something in excess of \$6000.00. I don't recall the exact figure, it's in evidence.

In short, if he wasn't insolvent before that settlement of the Elliff Hodes partnership, he certainly was insolvent at all times after that.

He came down into the October transaction trailing a large number of bouncing checks behind him, all of which were known to the—at least those that were given to Twin City—and some six of them had gone to protest, as appears from the plaintiff's Exhibit 16.

We have a very natural consequence of the very poor record of payments that is shown by the ledger sheet of the original partnership account, and also of the account under the name of Pine Supply

Company. Those are Exhibits 12 and 14, respectively.

We have as a natural consequence of those records and of the bouncing checks a considerable number of letters of complaint directed to Elliff by the president of Twin City Company, Mr. Hunter, all of which Mr. Hunter identified as well as Mr. Elliff.

And it is worthy of note, your Honor, that although Mr. Hunter had obtained at the outset of their dealings—of his dealings I should say—with Elliff, in the capacity of proprietor of Pine Supply Company, although he had obtained a financial statement from Elliff purporting to show his [582] actual financial conditions, he was so dissatisfied with it that in those letters he repeatedly demanded a new one and repeatedly demanded conferences with Elliff about his personal affairs as well as his business affairs.

Now Mr. Hunter on cross examination, of course, stated that he knew Elliff was the sole proprietor of that business following the dissolution of the Elliff Hodes partnership.

He knew that and consequently knew that the totality of his assets and his liabilities was the measure of his solvency and not merely the totalities of his assets and liabilities within that business, and also his assets and liabilities extraneous to it.

He knew that, and he was constantly demanding this statement which he never got. And still he says he continued to rely upon the statement that he had

received, with which he was dissatisfied evidently or he wouldn't have wanted a new one.

He evidently did not suppose that the statement any longer—if it ever had—represented the true financial condition of this man.

And he had every reason to suppose it didn't because while the statement, for example, showed a net worth, a positive net worth for that Elliff Hodes partnership, in which Elliff was then engaged, the actual net worth of that partnership, as shown by Mr. Baum, was a substantial negative [583] quantity.

And Elliff had actually, as I have said, paid heavily for Mr. Hodes share in this deficit. That's what the transaction amounted to.

Now as to Elliff. Frequently he communicated with Mr. Hunter and Mr. Hunter frequently called him up.

Elliff says that he told Mr. Hunter about his personal liabilities to Mrs. Lannin and had already told him about his personal liabilities to Mr. Charles Lannin and to Mr. Pasquinelli.

And Mr. Hunter had met those gentlemen and was at least acquainted with them. And yet he tells us that he not only did not make any inquiry into those matters himself, but that he didn't instruct Mr. Ramsay at the time when Mr. Ramsay audited the accounts of Elliff and had all of Elliff's records before him and had besides complete access to whatever information Elliff could give him that he wanted.

He never instructed Mr. Ramsay, he says, to ask



a question about any liabilities that Mr. Elliff might owe outside the business.

But those liabilities were large ones, your Honor. The liability to Mrs. Lannin amounted to some \$17,000.00 at the time of this October transaction, as appears from Mr. Baum's testimony and from her own and from Mr. Elliff's testimony particularly.

The liability to Mr. Charles Lannin amounted to a sum almost equally large, something slightly in excess of \$13,000.00 at that time.

And when we add those two figures together, we get approximately \$30,000.00 in liabilities in those two accounts alone that were in addition to the liabilities of his business.

Now he had assumed all of the indebtedness of this partnership, some of which had been incurred as early as January of 1953, others of which had been incurred of course, prior to the dissolution, and some of it in February or March of 1953. It amounted to a fairly substantial sum. And most of it still—as Plaintiff's Exhibit 21 shows—still remained unpaid at the time when he became bankrupt.

That in itself is an important point, if it please the Court, because it shows that there were at all times during this October transaction, and after the creditors of the bankrupt holding proof of claims under the Bankruptcy Act, since they were claims for merchandise supplied, that those claims have never been paid even to this very day in many instances.

Now at the time of the October transaction in

addition to his numerous conferences with Mr. Elliff on other occasions, he had what amounted to a showdown in August over the bad state of Mr. Elliff's accounts. [585]

It was largely delinquent. Many of these checks that Elliff had given him had been dishonored. He was thoroughly fed up with the transaction. He told Mr. Elliff then and there, according to Mr. Elliff's statement, testimony, and also according to Mr. Baum's, that he couldn't and wouldn't continue to ship Mr. Elliff anything further until something was done to provide a more dependable source of payment. The more demandable assurance, I should say, of payment, prompt payment.

His letters expressed the same view. There are six of those letters, your Honor; I mean the letters comprising Exhibit 3.

Throughout them you have not only references to these statements that were to be furnished by Elliff, but were demanded from Elliff and never supplied.

But you have references to his strong dissatisfaction with the way in which Mr. Elliff was conducting that business, which amounted to a showing that Mr. Hunter, at least, had very little confidence in the solubility of Mr. Elliff. He couldn't have expressed, so continuously expressed his dissatisfaction if he had confidence in him as a manager of a business.

This becomes particularly important when we recall that the supposed purpose of this October transaction was to enable Mr. Elliff to continue that business. [586]

And there we come upon the effect, the appalling effect of this trust agreement. Because that trust agreement, as your Honor will recall, not only allocated to the payment of this new note, this guaranteed note, twenty percent of the gross and not the net of the future proceeds of that business, all of them, until the note was fully paid.

But it also—and that was direct—they were to go, those payments were to go out of the gross proceeds. They were never to be mingled with the rest of the proceeds; they were to be kept intact until they were paid upon the installments of that note.

There you have one of the obvious purposes of the trusteeship that was set up.

And may it be observed there was no more occasion for Twin City Company to be a party to that trust agreement than there was to be a party to the promissory note or to the guarantee of the note.

The twenty per cent provision was a provision that obviously was inserted for its benefit as well as for the benefit of the guarantor and was more than that of great importance.

The authorities cited in my memorandum show Twin City Company's note of \$28,000.00, which it obtained from Mr. Elliff as a part of this transaction was fully secured by every item of security which Mrs. Lannin held. [587]

That, of course, included the warehouse receipts which had originally been issued to Twin City Company prior to the October transaction and were still held by it. That is a very familiar principal of subrogation and it needs only to be mentioned.

The essence of the transaction then was this, as it seems to me. Twin City Company obtained a \$28,000.00 note from Mr. Elliff. It obtained that note. It obtained \$28,000.00, a new obligation. It obtained full security for that \$28,000.00 obligation, not merely the guarantee of Mrs. Lannin, but everything else substantially, all the business assets that Elliff had or might thereafter acquire from whatever source.

If he bought a carload of lumber or a large—less than a carload lot of lumber—from some other supplier ignorant of the October transaction, that lumber under that trust agreement was to be warehoused and warehouse receipts upon it were to be issued to the guarantor of that note.

Then they became security for the payment of the note, exactly as much as though Twin City itself had held the warehouse receipts that represented that lot of lumber.

Of course, that deprives the seller of the lumber of any means of getting paid unless Elliff was able to pay him out of the remaining eighty per cent of his gross proceeds.

So the evident effect of this transaction was, if Elliff [588] was not insolvent already to insure that he would soon become so.

Because in order to continue his business at all he must inevitably contract obligations which he could not expect to pay as they matured, and which in fact he could not expect to pay at all unless his business took a large bound upwards.

Now Mr. Elliff is a hopeful person, he is a sales-

man. That is perfectly apparent. But not one fact has been adduced in this case to show that any expectation of the increase in the volume of this business, a substantial increase was based upon anything more than mere hope.

His past experience with that business had dated from the beginning of November 1952, and he had been in charge of it throughout all that period of time.

And in only two months had he done anything better than break even. He had rolled up a deficit which consumed the capital of the Elliff Hodes partnership, he had consumed \$7000.00 of the capital loaned him for the business by Mrs. Lannin. He was doing business on borrowed money. He was insolvent to start with.

And what expectation could there possibly be by either the bankrupt himself or by the payee of that note that he would ever be able to pay it unless he paid it at the expense of other suppliers with property furnished by them, presumably in entire good faith on credit and in ignorance [589] of this October transaction.

When we come to that point we see the vital importance of the evidence of concealment and of secrecy. If they ever got wind of this transaction, it was quite apparent that they would never supply Mr. Elliff with anything.

Twin City Lumber Company did in November supply him with several lots of lumber, I mean in November of '53. And it finally got paid in full, al-



though only with long delays. But they had Mr. Elliff by the back of the neck.

Now it is time to show how they did it.

When Mr. Elliff testified and when Mr. Baum testified about the purpose of that note, they made it perfectly clear that from the point of view of Mr. Elliff it was intended to be payment for the antecedent indebtedness of Twin City.

That note plus a small sum of money, about \$160.00 or so, which was paid in cash, was supposed to discharge this antecedent indebtedness.

When Mrs. Swanson, the bookkeeper of the Twin City Lumber Company testified and produced the records, we found immediately that there is no mention whatever of the note as such as a credit upon their books.

The note was never credited at all. It wasn't accepted in payment by Twin City Company. There is no evidence that it ever was so accepted. The books are the only evidence of the manner in which it was taken and received and treated. [590]

Twin City Company credited the payments that were actually received on account of that note along with this \$160.00-odd dollars as those payments were received.

I mean Twin City Lumber Company for all of the subsequent payments were made to that concern, the new firm. The books were the same. They were continuously kept and they were continuously kept by Mrs. Swanson.

So they treated the note as though it were secur-

ity for the antecedent indebtedness. But that was not Elliff's intention.

So we have the situation referred to in the memorandum that the note was neither given as security nor accepted in payment.

Your Honor will recall that there was a covering letter which was produced by the defendants and is in evidence as Exhibit G, I think, in which Mr. Elliff said that he told Twin City Lumber Company that the delivery of the note was conditioned upon not only the release of the existing warehouse receipts, but also upon the surrender of the dishonored checks which had never been paid and which represented some \$9000.00 of the amount.

Well, that is a demand which would be perfectly proper and supports his testimony to the effect that he considered it was payment, not security, for this antecedent indebtedness. [591]

Yet we are confronted by the fact, which is admitted by Mr. Hunter and testified also by Mrs. Swanson, testified to by Elliff, testified to by Baum, that the dishonored checks never were returned to him. They always have been kept and kept apparently by the old firm.

Whether they were turned over to the new one or not, it seemed to be immaterial. They never reached Elliff. Mr. Hunter still had them until they were produced in this Court.

That doesn't look as though that note were accepted as payment because those checks represented more than a third of the entire antecedent indebtedness.

Well, they represented more than that.

We are realists, we can see what they represented to Mr. Elliff. They represented to him the danger of prosecution, issuing checks which he had no expectation of paying that would be paid when presented.

There was one of them for which he had an excuse. That was the one that had been sent through the Douglass Guardian Warehouse Company amounting to some \$7300.00. It was left undated by him.

Douglass Guardian Warehouse Company dated it and sent it to Mr. Hunter. Well, that was a very natural result of his issuing it in the first place.

At any rate, he was in serious danger. And there was two other checks for which he had no excuse at all. And [592] there had been several others which had bounced, as I have said.

In short, you have a situation here which plainly discloses the man was in a desperate financial condition at the time of this October transaction, that Twin City Company had every reason to know that fact.

All that is required, if the Court please, is to charge the recipient of either a fraudulent transfer or of a preferential transfer where his intent or his knowledge are material at all, all that is needed to charge him with such that is evidence that he had reasonable cause to believe.

Then if he turns his back upon the information at his disposal, his ignorance is purely willful and

no defense to it because what he should know, the law would naturally deem he did.

Now when you examine the October transaction in that way, that the man was insolvent, let us say, whether there was actual knowledge of that fact by Twin City or not, that the inevitable effect of the transaction was to hinder and delay as well as perhaps to defraud—not merely perhaps, but probably, which proved to be the case of the creditors.

You have a case of actual fraud. There wasn't any consideration for this transfer that did the estate the slightest bit of good in the world.

Let's examine the transaction. [593]

None of the antecedent indebtedness was paid for. That is clear because Twin City didn't accept the note as payment, didn't treat it as payment. It kept the old account still alive on its books and it still is. We saw the books and they are in evidence.

The ones that now carry that account are in evidence as Defendant's Exhibit K.

Plaintiff's Exhibit 13 completes the tally of the defendants' records other than the former open account with Elliff, which is Exhibit 4.

So it seems very clear that the effect of this transaction inevitably was, as I say, to allocate all of Elliff's present and future assets to the security, not merely of Mrs. Lannin the guarantor, that was purely nominal, to the securing of that \$28,000.00 note without discharging any of his antecedent indebtedness at all and without actually securing any of it.

Because to a contract of collateral security, it's as

necessary as any other contract that there be some meeting of minds.

Elliff had no idea that he was merely securing past indebtedness nor any intention to do that. As to the note then you have either a substantial failure of the consideration for which it was intended to be given, or else you have a complete failure of the minds of the parties to meet, either [594] upon the proposition that it would be accepted in payment or upon the proposition that it was to be taken as security.

In other words, it was a new obligation. It added \$28,000.00 to the tally of Mr. Elliff's apparent indebtedness.

The Court: Do you contend that after that he owed \$56,000.00?

Mr. C. Huntington Jacobs: I say the note was void, your Honor. If it hadn't been, he would.

It imparted a consideration being in writing.

Now the only consideration that I can see that the evidence actually contains of anything in the nature of consideration for that note is the release of existing warehouse receipts which were then held by Twin City and which represented his then existing stock in trade.

But the actual fact of the matter—and as Twin City well knew it was, had every reason to know it, had seen the trust agreement—the actual fact of the matter was that under that trust agreement Mr. Elliff was obliged to transfer that stock in trade to Mrs. Lannin as soon as that agreement went into



effect as security for her guarantee and therefore as security for the note.

All we actually have by this release of warehouse receipts is simply an act by which the security was transferred from the old account to the new account, that is to say, the note account, the \$28,000.00 note, supporting as it [595] did along with all his future proceeds and all of his future acquisitions of stock in trade, the guarantee to Mrs. Lannin and thereafter the note.

Now it seems very clear that there is more than a casual interest in Mr. Elliff's testimony regarding what Mr. Hunter told him on one of those telephone calls that was made in the immediate dissolution of the partnership and the October transaction.

Mr. Elliff's testimony was—and incidentally I have searched my notes in vain to discover, a memo to discover any denial by either of the other two parties engaged in that conversation, Mr. Ramsay that is, and Mr. Hunter.

Elliff's testimony was that Mr. Hunter said on that occasion words to this effect, "I don't care about anybody else. We want our money."

That I will submit to the Court was exactly the attitude of that company with respect to this October transaction. And it was the attitude also of its successor, also managed by Mr. Hunter, towards the payments that were received from Mr. Elliff after the October transaction.

That brings me to the conversation of the status of this—of these defendants—of these Twin City

defendants if we can group them all under that title.

It seems very clear there was absolutely no present consideration of any financial—of any pecuniary value at [596] all which was given for either the note or for the transaction that involved the note, or it didn't either discharge or secure any antecedent indebtedness.

My analysis of that transaction is correct. There has been no meeting of minds at least, upon either of those propositions. And it did not result in the estates receiving—relieving any of the property of the bankrupt from hypothecation at all.

The same stock in trade as were evidenced by the warehouse receipts that were issued by Mrs. Lannin pursuant to the trust agreement were still encumbered to the same extent exactly as they had been before, or almost exactly as they had been before.

There may be some doubt as to whether or not these trustees ever had secured all of that antecedent indebtedness. In Exhibits 1 and 2 they were intended merely to secure the account which is laid out in Exhibit 4 and which was brought to a balance of zero before those receipts were surrendered at all or agreed to.

But independently of that, there hasn't been any question at all that no benefit resulted to the estate from the mere transfer of these Exhibits as security for one account and security for another, at least, equally large.

And so the Twin City Company and its successor had given this estate nothing at all to compensate

this estate for the [597] additional security which they got for the note.

Now this trust agreement required an incessant series of payment required as often as they received a lot of lumber, warehouse receipts upon that lumber were to be issued to Mrs. Lannin.

That was to go on as long as he was able to continue his business. Also under that trust agreement every cent that was derived from the business was to be collected by him and turned over to Mrs. Lannin's trustee into the trust agreement, that is, Mr. Pasquinelli.

In Mr. Pasquinelli's hands of course, it still was secured, not only for Mrs. Lannin's guarantee but also for the note. Until it was disbursed, and only eighty per cent of it might be disbursed with the current expenses of the business, and eighty per cent of the business' stock in trade, the other twenty per cent must go into payments upon the note.

And what did estate get for that?

A mere exchange of more indebtedness, at the most for which the original warehouse receipts were security. It seems to me very clear that Twin City cannot claim the status of a bona fide obligee for anything like a present fair equivalent value.

Of course, it had to be that in order to be immune from the trustee's right to prosecute this action under Section [598] 67-D of the Bankruptcy Act or under the equivalent provisions of the Uniform Fraudulent Conveyances Act. And also would have no rights to any equity in treatment in accordance with clause 6 of the second paragraph of subdivi-

sion F of Sections 67 because it has not parted with anything of any value to the estate.

And as the memorandum plainly discloses, your Honor, although I inserted it because the Court noted far better than counsel the law that says, "The value of the fairness of the consideration must be evaluated in the point of view of the creditors of the debt."

We have left with consideration then only the matter of these preferential payments. As to them it seems to me that the entire matter resolved itself into a question of fact.

Did the Twin City Company know or did it not know or had it or had it not reasonable cause to believe, to use the language of Section 60, subdivision A and B, "That the bankrupt was insolvent at the time when these payments were received."

I said Twin City Company inadvertently; I ought to have said Twin City Lumber Company because it was the new firm which we have had.

These new preferential payments of course, they were all received within four months of bankruptcy and they were all made in 1954 subsequent to March 10th. There is no question [599] that they were made and there can hardly be any doubt that the bankrupt was insolvent when he made it. He certainly had not improved his position, according to his testimony, according to Mr. Baum's testimony since the October transaction.

The Court: May I interrupt you for a second, Mr. Jacobs?

In counsel for the defendants memoranda, which

was filed yesterday, which I received, he makes the distinction between the second and third counts. Have you had an opportunity to read those memoranda?

Mr. C. Huntington Jacobs: No, sir, I have not. But I can imagine what the distinction naturally would be. The second count of course, as I advised the Court at the beginning of this case involves funds which are claimed also under the theory of fraud in the first count, \$2500.00.

The Court: The second count is the \$2500.00 payment on the note?

Mr. C. Huntington Jacobs: That is right, sir.

So much of the \$5000.00 paid all told as was paid to them within the four months. The other \$2500.00, your Honor will recall, was paid by Mr. Pasquinelli in December and cleared, I think that is, the check was issued in December and cleared in January of 1954.

So the payment was actually made in January of 1954, that is, before the start of the four months period. [600]

I don't know what other distinction there may be between the two things. If they are preferances, they are recoverable as such under the principles of Section 60 A and B.

But you have this situation regarding the proof of knowledge or reasonable cause to believe. They had reasonable cause to believe in October that this bankrupt was insolvent. I think that that appears by overwhelming weight of the testimony.

And I think too, that any testimony that they



didn't actually know is merely a different form of saying that they didn't want to know and declined to be enlightened by the means at hand which were at hand to enlighten them.

And those means were amply sufficient to give them all of the facts. Well, they knew or they ought to have known in October of 1953 when this October transaction occurred that the bankrupt was already insolvent.

They had seen the trust agreement—Mr. Ramsay had and he was the agent charged with the conduct of these negotiations. He had seen it according to his own testimony on cross examination about two days after the second meeting in Mr. Pasquinelli's office. There is no dispute about that.

There may be some dispute as to whether he read it. The testimony of Mr. Elliff and of Mr. Baum is that they saw him read it. There may be some doubt as to — there may [601] be some dispute as to whether Mr. Hunter got a copy of it.

The testimony of Mr. Elliff and Mr. Baum is that they left one for him with the maid at his house with these other documents which he admittedly did get. And the testimony of Mr. Hunter is that he heard about the trust agreement from Mr. Ramsay by telephone shortly after the meeting of October the 8th.

And furthermore while we are on that point, your Honor, this disclaim for any interest in the trust agreement still consorts with the established facts. It can't be disputed now. There Ramsay has admitted that he attended not one but both of those meet-

ings in October, not only the one on October 6th at which the trust agreement was only briefly discussed, according to the other people present at it, but also the one on October 8th where every term of it was fully discussed and agreed upon and where this policy of secrecy was discussed and decided upon and where the reason was given for the policy.

One was in various forms by the other witnesses who attended that conference, the reason being that it would incite litigation on the part of other creditors if they knew of it. That is the reason that was given.

What was implicit in the situation was, the further reason that the bankrupt couldn't continue his business unless he did so on credit. [602]

He couldn't expect to get credit unless he got it from others than Twin City Company as well as perhaps Twin City; that they wouldn't give it to him if they had any idea that such an transaction had occurred.

So the testimony is unanimous upon the subject that no such notice was ever given to creditors in any shape, manner or form.

Mr. Pasquinelli so testified, Mr. Elliff so testified, and Mr. Baum so testified to the best of his knowledge. Of course, his knowledge was accurate up to the end of that year, complete up to that time.

Now they say that they weren't interested in this trust agreement, that they were relying entirely upon the Lannin guarantee. The stubborn fact remains that Mr. Ramsay took sufficient interest in that trust agreement to sit through that entire con-

ference and participate in the discussion as well as to attend and participate in the discussions at the October 6th conference.

That he couldn't deny. He even made notes upon it, according to his testimony under Section 21-A, which was produced here as impeachment. Where the notes are, we don't know.

And that isn't the only record that is missing.

Mr. Ramsay made a survey of the accounts receivable of that business and dated at the meeting which consummated the [603] series of investigations that he made throughout a period of a week in the latter part of September of 1953. And he made tapes showing the liabilities outstanding in the business at that time.

And then as soon as the October transaction had been consummated, both tapes and the survey were destroyed on the orders of Mr. Hunter, according to Mr. Ramsay's testimony.

There was no dispute of it by Mr. Hunter. The secretiveness of this entire transaction is emphasized, I think, by such things as this, and also such things as this.

Although Twin City was represented at those two conferences in October, the guarantor was not. She wasn't present and neither was her attorney. They would have been had they known there was such a conference afoot, one or the other of them. It seems almost certain that neither of them was there.

They wouldn't even give her any more information about this than they had to give her in order to get her to give the guarantee. It even extended

as to a provision in the trust agreement itself on the last page against having any notice to the creditors. They might buy goods from these same people that Mr. Elliff owed money, or intended to owe money. And if they did, they might divulge the fact that Mr. Elliff's accounts receivable apparently had been transferred to a trustee, which wouldn't look well to his creditors. [604]

There was to be nothing to put the creditors on guard. They weren't on guard. They were deceived.

It was almost some nine months thereafter before a series of attachments by the creditors finally brought this business to a close.

Now Twin City knew all of that history. They knew about his past unsatisfactory performance in paying his debts to them. They knew all that at the time when these payments were made in March and April and May of 1954, within the four months period.

They knew that they had had a great deal of trouble in collecting what they claimed from him. And on account of the sales that they had made as far back as November of 1953, he was badly delinquent in it, in those matters.

One check that he gave them for \$1200.00, according to Mr. Elliff, had gone to protest. Finally, it had cleared. So that his record of bad checks was still with him and still continued. They knew all that.

And if they did not actually know that he continued to be insolvent, certainly it wasn't for want of having been warned of the facts. That would

put anybody on inquiry in that regard, that he had reason to believe that he was. It seems perfectly apparent.

I don't see any contradiction in the evidence of that fact. Mr. Hunter has been able to tell us [605] that so far as he knew, he didn't know about these personal obligations. He didn't know about Mr. Elliff's insolvency. That he had reason to know of it, that is another matter. It seems to me he had every reason to know and every opportunity to find out.

Well, I cannot see how they can dispute the right of the estate to recover the payments that were made within that four month period as preferences.

That applies as well to the second count as it does to the third count. But here you have the fourth count of the complaint.

As to that, we are on new territory. So far as I know, I will have to concede right now that frankly my research has not been able to find any instance in which any such claim has either been sustained or rejected by the Court.

I base it upon consequently what seemed to me to be fundamental principles of the law. Under Section 70-C of the Bankruptcy Act, the trustee and so-called strongarm clause, the trustee is invested with the rights of a creditor holding a lien as to all property that was actually in the possession of the bankrupt at the time of the bankruptcy.

That is July 10th, 1954, admittedly by the pleadings. And he is invested as to all other property



with the rights of a creditor holding an unsatisfied judgment.

And of course he continues in the possession of those [606] rights throughout the administration of the estate.

Now these people, the old firm namely, according to the theory of the plaintiff—and it does seem to me to be very fully established by the evidence, your Honor—they committed a fraud. They knowingly committed a fraud. They not merely participated in the fraud by the bankrupted, but they had actual knowledge of the facts sufficient to give them every reason to believe that the creditors were going to be hindered or delayed or defrauded.

Your Honor will recall that Mr. Elliff testified that they suggested this trust agreement, insisted upon it. Mr. O'Connor's testimony was that Mr. Ramsay carried the ball, as I think he said, in the discussion on that matter, the base discussion on that matter that occurred before he stopped it and said he didn't know enough about Mr. Elliff's affairs to pursue that matter.

And the testimony of all of the participants, except Mr. Ramsay, admitted he was there and may have put his two bits worth at the time of the conference before Mr. Pasquinelli.

Mr. Ramsay took part in the discussions that occurred at that conference regarding the terms of the trust agreement, regarding the policy of secrecy.

So they were fully aware. Mr. Ramsay, of course, having received and read the copy of the trust [607] agreement, which was finally prepared before the

note was ever delivered, knew exactly what it contained.

So before they received these documents these people were fully aware that that was being done there, was a hindrance, was going to be in all human probability a hindrance and a delay and a fraud upon the creditors of the bankrupt.

And they must have known that sooner or later those creditors would attempt to attach assets of the bankrupt which were under the umbrella provided by that trust agreement. And when they did, if it was a part of the stock in trade, Mrs. Lannin would have to bring forth her trust receipts, the third party claims of those assets.

And in that or any other event, the terms of the trust agreement were bound to become known to the attaching creditors. It took no foresight at all to amount to anything to foresee that when that agreement became known those creditors were going to institute litigation under the Uniform Fraudulent Transfer Act or start proceedings in bankruptcy, which is what actually finally happened. It cannot be that the start of that bankruptcy proceeding would be of any surprise at all to those gentlemen. They must have foreseen that it was likely to occur.

Then they must have foreseen too that in the bankruptcy proceedings Mrs. Lannin would certainly have to assert the same claim that she had as against these assets, not only [608] because she would want that security but also because if she did not she would be criticized by the obligee and this

contract of securityship in which she was involved. She practically would have to do it.

Of course she did it.

Considerable expense was caused to the estate by her doing it because it was necessary to find out the basis for her claim and it was necessary to find the true inwardness of the situation.

It was a highly complex picture that these people would paint in cooperation with the bankrupt. I should have said company. They must have known well in advance that when that chain of events took place, the estate was going to lose heavily by it in the expense of exposing a default and defect in this claim, namely that it arose from a fraudulent transaction.

Of course, that all happened.

The only objection that I can see or anything in the nature of an objection opposing counsel would be to this fourth count, the propriety of it.

I mean that the estate wasn't in existence at the time when the fraud which gave rise to these damages was committed. There I draw upon an analogy, the law of negligence; the books are full of cases, as your Honor is well aware of, in which dangerous instrumentalities likely to harm children [609] have finally caused harm to a child that was not even born when the instrumentality was installed or when the defect in it was allowed to occur. And liability has been predicated upon the logical sequence of cause and effect which caused that original wrong to produce that ultimate danger, the injuries of that child.

And I see no reason why fraud should be indulged to any greater extent than negligence. It seems to me it's a highly salutary principle which we ask the Court to establish here and a fraud facer cannot escape the consequences of his wrong upon any such ground as that.

It seems to me clearly that the trustee, being the representative of all the creditors under the plain implication of Section 76 in this regard has the same right to sue for the damage caused him by this fraud as that child would have to sue for the injury caused to it by the authority of the defendant.

And it seems to me further that if exemplary damages were ever appropriate in a case—and I think we have been moderate in our requests for them—it seems to me that they would be appropriate here.

Because if the fraud was ever to be penalized, it seems to me it should be penalized when it results in actual injury to innocent third parties like the creditors represented. [610]

Now in this case by this trustee. We rest our case upon that reasoning, your Honor, for lack of account to find an instance in which such a contention has been urged at all. I am reminded of the statement of a fictional character creation. Way back in 1880 or I think '90 in this book the character is being taken to task for wanting to marry a prince, of a neighboring kingdom of which there was not precedent whatever.

She told the king or her prospective father-in-

law there couldn't be a precedent for anything the first time it was done. That is the situation here.

Mr. Shapro: If it is satisfactory with the Court, I think the cross-complainant might argue and I might reply to both of them at the same time, if that is agreeable.

The Court: I suggest Mr. Jacobs who has just finished, that you might glance at the memorandum that was filed with reference to that distinction set forth between the second and third counts. You can reply to whatever argument Mr. Shapro makes on it.

Mr. Robert Jacobs: If it please the Court, I see no benefit to be gained by the Court by my going over these facts as they pertained to the trustee's case because the facts are the same and are effective in the same way towards the cross-complainant's case.

However, I would like to point out to the [611] Court certain facts which pertain only to the case of the cross-complainant, Mrs. Pearl K. Lannin.

That is first that there was no benefit shown under the facts to Mrs. Pearl K. Lannin by this trust agreement or the whole October transaction. We learned that from the testimony of Pearl K. Lannin herself in which she stated that the only reason she guaranteed this note, the only reason she took part in this transaction at all was to try and help out her son-in-law.

She gained nothing monetarily or otherwise. This is also clear from the terms of the trust agreement



itself which has been entered into evidence and which the Court says it has read.

Secondly, there was no knowledge of the fraudulent character of the transaction by Pearl K. Lannin. The testimony of Pearl K. Lannin, she said that in her conversations with Mr. Elliff he stated that he needed the money in order to get the stock in trade released from the warehouse and into easier hands because his business was good and he needed to be able to move it faster.

There is also the testimony of Pearl K. Lannin that she was given to understand very definitely that this transaction had to take place in a big hurry.

It's the testimony of Mr. Henry Robidoux, her attorney, that the transaction had to take place in a big hurry. And [612] that his investigation of the matter was very sketchy because of the great rush.

The next important part of the testimony pertaining to the case of the cross-complainant that has not been shown prior to this time is that payment was made by Pearl K. Lannin to the extent of \$2000.00.

Her testimony was to this effect and there is also an exhibit to this effect. This was made up the demand of Twin City Company, Twin City Lumber Company or its assignee.

Now it is also shown by the testimony of Pearl K. Lannin that this amount was paid prior to the time she had any knowledge of the true facts surrounding the October transaction.

There has been no showing that she had any

knowledge at all of these facts. Her testimony is to the effect that she did this in order to benefit her son-in-law. She thought her son-in-law was in good financial condition. She merely wanted to help him out.

There is also the question of damage resulting to Pearl K. Lannin, the cross-complainant, caused by the October transaction, to which we feel Twin City was an active party.

That damage has been testified to by myself and pertains to the third party claims that were asserted and which she had to defend against, at least by way of pleadings; although they went no further than that because of the bankruptcy that [613] was filed and the assertion of the claimant Mrs. Lannin to the stock in trade that was made in the bankruptcy proceeding.

And then again it is urged that the Court's attention be directed to the fact that this also was prior to the time that the true nature of the October transaction became apparent to Mrs. Lannin.

With those additional facts in conjunction with the argument made by the attorney for the trustee, we feel and respectfully request that the prayer of the cross-complainant, Pearl K. Lannin, be answered in all its particulars.

The Court: Shall we take a short recess?

(Recess.)

Mr. Shapro: First your Honor, may I extend my appreciation to your Honor and to counsel for your tolerance of my indisposition of last week. It

was a big help to me to be able to postpone this argument until this time.

In view of the fact that in the memorandum that we filed, we have covered in outline form and with some citations the legal principles upon which the defendant's case is predicated, I am going this morning, your Honor, to limit myself if I can to the application of those legal principles to the facts of the case.

With respect to the first count, which is from all standpoints the most important involved in this litigation, we have [614] an attempt by a trustee in bankruptcy to set aside what I assume is a legal obligation. The statute calls for the setting aside of transfers or obligations incurred is, you understand, fraud either constructive or actual as a subdivision of D.F. Section 67 sets forth.

Counsel in his argument this morning referred to transfers. If it is contended there is a transfer to be set aside here with respect to the first count, the note, I am at a loss to understand it.

The physical facts, and I in discussing this phase of the matter your Honor, I am going to assume for the purposes of the argument the facts as contended for by the plaintiff—in other words, without regard for conflict in testimony, without regard for anything, but a case, if submitted to your Honor for the sake of argument at the end of the plaintiff's case.

At the time of the October transaction, which is that which is challenged in this first count, what do we have?

We have Twin City Lumber Company holding warehouse receipts under the May agreement which wasn't challenged in the pleadings, it wasn't challenged in the Court this morning.

The main agreement, as the field warehouse set up the importance of that, your Honor, to this case is I think this: The purpose of the uniform [615] warehouse receipts act, the purpose of field warehousing is to create, to permit the creation for business purposes of liens upon personal property in compliance with the provisions of Section 3440 of the Civil Code regarding the immediate and continued change of possessions.

Great secrecy was laid in argument this morning upon the secrecy of this October transaction, the concealment if I may use counsel's word.

It is our position if your Honor please, that in October there was nothing to conceal; there was nothing of which notice either had to be given or even should be given.

The situation was this: That Twin City had warehouse receipts admittedly for its security. There isn't any real doubt if your Honor please, that it was to secure the entire transaction because Mr. Elliff's own testimony was that the October transaction and the warehouse account—and I quote his words—were one and the same thing.

There is no other testimony on that subject. The warehouse merchandise in October on the testimony of everybody was valid — was reason for the \$25,000.00.

At that time Elliff was indebted to Twin City in



the total sum of \$28,113.00. So that assuming that we are confined from a dollars and cents value for present consideration purposes, to \$25,000.00, Twin City Lumber Company was in effect unsecured for \$3100.00. [616]

What did we do; what transfers took place; what was done?

The warehouse receipts that we held invalid without notice—and I want your Honor to bear in mind that the creation of a field warehouse, the issuance of warehouse receipts is one of the several means provided by the California State Legislature for the creation of commercial liens upon personal property for security purposes without either the publication of notice as required under 3440 or under the Section 3017 and so forth.

We gave up those warehouse receipts pursuant to arrangement and Mrs. Lannin became in effect our successor on the warehouse receipts.

What assets of the bankrupt were transferred at that time? By the bankrupt, nothing. When your Honor reads the Uniform Fraudulent Conveyance Act which is the counterpart of it with minor exceptions, in our 3439 12 subdivisions, you will see, I am sure, that there has to be transfer of the bankrupt's property.

Now I concede in view of the state of the record that it is legally possible under those Sections to set aside an obligation conceived in fraud.

But as we have pointed out, that involves several things that are not present here. That involves the creation of an obligation for fraudulent purposes.



As I pointed out in our memorandum your Honor, we were unable despite I think reasonably arduous trial to find but one case in which an obligation as such was challenged under Fraudulent Conveyance statute and we have referred to that in our memorandum.

There was one sentence on the subject which I quoted in the memorandum. The substance of it is that that was intended. I mean that wording in Section 67 under the Uniform Fraudulent Conveyance Act was put in there to avoid bankruptcy for the purpose of enabling some friends, some co-conspirator to share in his estate, when actually such creditor had no such just claim, and therefore defeats and defies the other creditors of lawful participation in the exclusion of the fraudulent creditor. We don't have that here.

It seems to me your Honor, clear from the evidence. Mr. Elliff owed us \$28,116.00. And I say as a matter of law that at least \$25,000.00 of that was secured at the time.

But let us assume for the sake of argument with respect to the unsecured portion, or that it was all unsecured, which is not the fact, but let us assume it was all unsecured, what did he get? What did Twin City get as a result of the October transaction?

They got a note evidencing the exact amount of the indebtedness, the \$28,000.00. They got a [618] guarantee of a third person. There was no depletion of the estate because the only security that Mrs. Lannin got was the same security, whatever it was worth, that we had before.

In order, if your Honor please, to successfully attach an obligation or a transfer as a fraud, there must be fraud proven unless it comes within the subdivision A of Section 62 D too, wherein there is a lack of a fair consideration.

Fair consideration is defined, if your Honor please, in Section 67 D 1. It says "When in good faith in change and as a fair equivalent, therefore the property is transferred or an antecedent debt is satisfied."

Now we get to the situation that counsel discussed this morning as to the purpose of the note.

I say to your Honor, and I am sure you have excellent notes and recollection of the testimony, neither Mr. Elliff or anybody else in this Court testified that the note was intended to be given by him or to be received or accepted by Twin City as payment of anything.

That is a figment of the imagination of counsel based upon an inference that he would ask your Honor to draw.

Is it logical, is it good sound common sense? Is there anything fraudulent in connection with a person who was physical security for part of his debt when as we are conceding for the purpose of this argument his debtor is insolvent and when let's say he knew or ought to have known [619] that he was insolvent to obtain security of either additional security of the same kind or substitute some other security?

There is nothing fraudulent in that, in that there is nothing reprehensible. The Bankruptcy Act was

never designed to cover such a situation. Section 60 which is the basis of counts two and three, was designed to cover such a situation with an arbitrary form on limit.

Let's assume for the purpose of the argument that Elliff was insolvent in October and we knew it. And let us assume that we had either all or a partial unsecured possession of it. Mr. Hunter had closed the warehouse. I mean I am taking all of this testimony the way it was given for the plaintiff.

He wanted his money or else, or else of course, was the closing of the warehouse and ultimately possibly the liquidation of the warehouse. But the warehouse will be liquidated on testimony of everybody in this case.

We would have gotten \$25,000.00 worth of merchandise and we would have been unsecured for \$3,000.00.

But let us say we were all unsecured. What did we get? We got a guarantee, the guarantor got the security.

Let us assume that if we had even gotten direct security from the bankrupt in October of 1953 and that we didn't have before, and if no bankruptcy ensued within four months then all of the other circumstances of the case, under the law and [620] the decisions we have cited in the memorandum, your Honor, there is nothing fraudulent about it.

Judge Wilbur in the Ninth Circuit discussed that matter in the case that we cited. It is as close a situation to the existing facts with respect to a trustee's action for fraud as we were able to find.

I say it challenges credulity to ask your Honor to conclude that this note was intended by Elliff, whether it was accepted or not, as payment of anything.

The setup, the physical setup in the records of Twin City Lumber Company, your Honor, as shown by Exhibits K and F, Plaintiff's Exhibit 13, show clearly exactly what transpired. And counsel inadvertently stated something to your Honor when he said towards the latter part of his argument that the transaction on the warehouse account cleared the warehouse account, which is Plaintiffs' Exhibit 13, before the October transaction. Such is not the fact.

Exhibit 13 shows that as of August 31st there was a balance owing to Twin City on the warehouse account of \$25,468.29. Under date of September 21st, there was credited against that account the proceeds of the check that subsequently bounced \$7,310.98.

And on September 24th, the proceeds of another check that bounced \$741.26, leaving a balance as of September 24th on the account after giving effect to a check which had not [621] been returned of \$17,416.05.

That account your Honor, was by journal entry transferred to the notes receivable account, which is account number 117 B, which is part of Exhibit K, not prior to October 8th, or whatever date this trust agreement and note were procured.

Your Honor's examination of the notes receivable account, counsel says there was no note entered in



the books. As to an entry saying "Note dated so-and-so for so much money" no, there wasn't.

But as your Honor will read from Exhibit 117 B, it is headed "Notes receivable, Pine Supply Company." Therein it is entered—all of the items, the three bad checks, the third one being a \$2500.00 payment which was credited on the open account and which balanced the open account which is in evidence as Exhibit 4 and which was subsequently returned.

So that account was balanced by a bum check.

This account, the warehouse account was balanced—was reduced from \$25,000.00 to \$17,000.00 by two bum checks and was balanced out only by a journal entry, which is reflected here under the same date October 16th.

In other words, if your Honor please, it is also in our judgment a challenge to credulity to assume that the effect of this transaction as handled by us, forgetting Elliff's intentions, would have put us in a position where they could have at any time urged a claim for anything over \$28,000.00. [622] It just isn't possible.

Much is made your Honor, in an argument by counsel for the plaintiff of the fact that the three checks, three bad checks were not returned. The only explanation that was given was, I think the logical one, the reasonable one, namely that they were misplaced by Mr. Hunter. There is no evidence of any coercion. There was no evidence of any threats made in connection with the use of these bad checks. There is no evidence that the



checks were ever presented after the note was given or ever any payments made or attempted to be made on the checks.

What harm did the bankrupt estate suffer by reason of the fact that the three checks remained buried in a file, in a personal file by Mr. Hunter instead of being sent in the mail to Mr. Elliff? None whatsoever.

As far as adequate consideration for this note was concerned, the note is supported by not only the past consideration, the antecedent indebtedness to which I have referred, which includes all of the items of the \$28,000.00, but also current considerations.

First, the extension of the time of payment. The plaintiff concentrated in his evidence upon the fact that Twin City Lumber Company was pounding on Elliff's door very vigorously.

All the obligations up to the time of the notes was past [623] due. What happened as a result of our obtaining this note and getting the guarantee? Let us say the trust agreement too for the sake of argument.

We extended the time of payment or the first installment to February 1st of 1954. There is evidence to show your Honor that we subsequently agreed in writing to extend it beyond that to May and the balance of the \$28,000.00 was extended for a period I think of twenty-two months.

Certainly, an addition of time of payment where a debt is already past due is an ample current consideration. Furthermore, we gave up the ware-

house receipts. Now it is true, technically, as counsel argues, that the warehouse receipts were transferred in effect to Mrs. Lannin and that since they were security for her guarantee for the same obligation, that theoretically they were to our benefit. That is true.

Your Honor will recall that you stopped me at one point when I was attempting to emphasize or offer for the second time the fact that after October Twin City Lumber Company had no control whatever over the warehouse.

Your Honor stated that there is no evidence proving it. It was obvious. And it was obvious and that is exactly—that touches upon the circumstances of this transaction in the first instance.

This is exactly the situation that Elliff said—and [624] counsel quoted him correctly this morning—when he asked his mother-in-law to endorse this note he said, “I want to get the warehouse in more friendly hands.”

And the best evidence of the fact that he did get it in more friendly hands, that is, that the effect of it was to make it a lot easier for him was as the evidence showed that at the time of bankruptcy, there was only \$5,000.00 worth of security in the warehouse for Mrs. Lannin.

In other words, despite the fact that he bought \$15,000.00 worth of approximately new merchandise after October 8th, despite the fact that theoretically under the trust agreement twenty per cent of that was automatically held out for our own benefit, I mean, in connection with sales, despite

all of this, despite the fact that she got \$25,000.00 worth of security at the same time that we gave it up, she wound up with \$5,000.00 worth of security in the warehouse, which incidentally she lost to the trustee by virtue of a proceeding on its face appeared to be adversary, but actually it was not.

He got his warehouse into friendly hands. He was able, as your Honor heard testimony, he told Mr. Pasquinelli what to do in connection with non-payments and with Mr. Pasquinelli as his successor—your Honor heard the testimony that everything was done by Mr. Elliff and she went through.

The answer to that of course is, your Honor, that Elliff [625] got what he bargained for by the transaction and we got what we bargained for and we were entitled to get what we bargained for, namely a note guaranteed by Mrs. Lannin and Mr. Elliff got his warehouse into friendly hands.

There is nothing in connection with the transaction of October 8th that required under any statute of the State of California or of the United States that I know of, any notice to be given to creditors whatsoever.

And if Mr. Pasquinelli testified that he discussed the fact that notice might need be given, all I can say is that he must have concluded that it wasn't necessary, or at least that it wasn't advisable.

It might not have been advisable from Mr. Elliff's standpoint to give notice, if there was a way of giving notice, I don't know what you would do by giving notice about a transaction that isn't involved in the transfer of personal property or the stock in

trade of a merchant, the stock in trade of a merchant wasn't transferred in this deal or didn't purport to be. It was the warehouse receipts that were transferred.

Now counsel says from reading the transfer agreement that the trustee was to take and withhold twenty per cent of the gross receipts for the benefit of the secured creditor.

I ask your Honor to read the agreement and you will find that there is in there an express provision that is made for [626] the benefit of all creditors, not the twenty per cent agreement, the whole trust agreement is made for the benefit of all creditors.

Now what is fraudulent, what is required—what requires notice of any transaction which on its face is made for the benefit of everybody and it says so?

I am not interpolating, it's there in just so many words.

Now I am not going to spend any great amount of time on this phase of it because I don't think either from a legal or practical standpoint it is necessary. But I want to call your attention with respect to the credibility of the witnesses involved here and of part of counsel's argument to certain exhibits and the fallacy, the unreasonable conclusion that he asks your Honor to draw from the face of the record.

He has asked you to draw the conclusion and believe Mr. Elliff in connection with the Coast Range transaction, namely, that he told Mr. Hunter at the time of the May transaction which followed immediately the dissolution of the Pine Supply



partnership, that he owed one-sixth of \$70,000.00, in effect, on the old Coast Range Lumber Company deal.

As of April 7th which is a little less than a month before this transaction—we are reading from Defendant's Exhibit I—Coast Range is listed as an asset for \$9,000.00.

Now Mr. Hunter said that he called Elliff's attention to the fact that he didn't consider that worth anything because [627] he knew that Coast Range had been wiped out.

But is it consistent that at the same time that he gives, or immediately after he gives the man a statement showing an asset value of Coast Range for \$9,000.00 that states he told him that he was indebted for one-sixth of \$70,000.00 worth of indebtedness for Coast Range.

Again I say to your Honor that taxes the credulity. I would say indication of the inherent probability of certain phases of Mr. Elliff's testimony is disclosed by Defendant's Exhibit E which is the financial statement of Pine Supply Company submitted as of April 7th, 1953, the same date as the personal financial statement of Elliff, which shows a net worth of \$17,030.25.

The net worth of Elliff personally as shown by Defendant's Exhibit I on the same date is \$21,400.00. This is the same partnership, the same partnership which Mr. Baum testified as of May 20th when it was dissolved a month and 13 days later had a deficit, a capital deficit. And counsel



said it was large. He used the words "large," or its equivalent.

It actually showed a capital deficit of \$2,200.00.

I say to your Honor that the people who were defrauded in connection with representations as to assets value were Twin City Lumber Company, not Mr. Elliff.

Now counsel made the point this morning when Mr. Hunter was dissatisfied with that financial statement—and he bases [628] that statement upon the fact that Mr. Hunter through his correspondence repeatedly asked for current new personal and financial statements.

Your Honor knows from business experience, and counsel knows just as well as I do, that any creditor when he once relies on a financial statement continues to rely on it and is entitled to rely on it until he receives information from any source to the contrary.

Furthermore, it is common business practice to try to keep financial statements up to date to avoid the very situation that ensued here.

The evidence is also clear, your Honor, and admittedly by Elliff that Mr. Hunter never got those statements.

Now I pose this question to your Honor. Why didn't he get those statements? Why did he want them if he knew the condition?

He didn't get them because Mr. Elliff didn't want him to know it. I think that is a much more logical and reasonable interpretation of the facts of the evidence than that called for by counsel.

Now counsel used the expression that in effect Mr. Hunter said, "I don't care—" in the September conversation in San Francisco—"I don't care about anybody else, I want my money."

It is undisputed. He is right. Substantially, those [629] words were said. In that connection I say to your Honor there is nothing reprehensible, nothing fraudulent to delay creditors, nothing that makes voidable this transaction by reason of any such position of Mr. Hunter.

The authorities we have cited to your Honor, particularly again this Woodruff case supports exactly that theory.

Counsel is also, I think, confused in connection with what he says we ought to have known and that reasonable cause to believe means that it would have in effect put a reasonably prudent person upon guard and if he doesn't make that inquiry, he is chargeable.

I agree with that wholeheartedly, but that does not apply to Section 67 of the Fraudulent Conveyances that reason applies, if your Honor please, only to Section 60.

Again I refer to the memorandum to support that statement.

Under the decisions—and they go back to the original fraudulent conveyance and we have referred to them here. Under the law there must be in this case an actual intent.

And to use the words of the statute, "As distinguished from intent presumed in law." I am

reading from Section 67-D, 2 D, 67-D, 2 subdivision D.

It says, "As distinguished from intent presumed in law to hinder, to delay, or to defraud."

The cases are legion. They are cited in the memorandum.

In other words, with knowledge of insolvency on the part [630] of the transferee, if more than four months before bankruptcy not evidenced and does not constitute evidence of hindrance or delay—the cases I mean are clear on that point.

The cases are also clear, if your Honor please, upon the interpretation that to defraud, one must show actively by clear and convincing evidence not only that there was insolvency, insolvency alone at the time of the making of a conveyance and knowledge of insolvency on the part of the transferee is not sufficient by any standard or yardstick laid down by the courts to impute fraud.

In the first place, that statute said it cannot be inferred, it must be active. And in the second place in reasoning it out, as the courts have, they go further and say it must be by clear and convincing evidence.

It might be interesting just to point out in passing at this moment that in the complaint in this case, the first count, the arch conspirator, the architect of this devious scheme is definitely named by the plaintiff as Mr. Hunter.

The argument this morning, which is of course necessarily based upon the evidence in the case, now names Mr. Ramsay as the arch conspirator.

In other words, I think—and when your Honor reads that complaint, if you do again, I ask you to read it again respectively in the light of the evidence you heard and the argument which was made this morning by the plaintiff because [631] I think you will find that the complaint envisioned a situation which unfortunately for the plaintiff he was unable to prove in this case and he is now attempting by virtue of what I would call, shall we say, a tortuous argument with respect to the evidence to bring himself within a case, not the case that was pleaded, but a case of a fraudulent obligation.

If your Honor please, we also have a very interesting situation here which I comment on for reasons that would be obvious but also because your Honor addressed us jointly some time back with respect to the right to file claims in bankruptcy after the expiration of the six months period.

It is interesting to note that the plaintiff in this case seeks to have declared null and void—and I am quoting from his prayer in this complaint as to count one—the \$28,00000 note.

I ask your Honor how and in what way the estate of the bankrupt can be benefitted by the cancellation of that note when two things admittedly occurred?

First, the time for filing claims by us has expired and we never filed a claim on that note.

Two, Mrs. Lannin argues in the complaint that the estate might lose the warehouse—the \$5,000.00 worth of merchandise that was left in the ware-

house at the time of bankruptcy. They might lose that. That was in the complaint.

The evidence now shows from the decision of the Referee [632] that Mrs. Lannin lost that. The estate got that.

I say to your Honor that there is no possible benefit that can result to the bankrupt's estate by reason of setting aside this note with the single possible exception of the recovery if the note is invalid of the \$5,000.00.

Counsel might say, "Well, \$5,000.00 isn't hay, I mean, that's something."

But we have this situation. Section 57-N of the Bankruptcy Act, which we read to your Honor which provides that after the time for filing claims if a creditor who has not filed a claim within the six months, that means that he may then file a claim within thirty days after the judgment becomes final if the payment is made within fifty days.

If the note is set aside, as per the prayer of the complaint under the second count, he would recover \$5,000.00 from us. And how could we raise the \$5,000.00 back when it was paid under a note that your Honor would have declared under the first count to be invalid.

The Court: The \$5,000.00 you are talking about is the payments on the note?

Mr. Shapro: Yes, your Honor.

The Court: But the second asks for only \$5,000.00.

Mr. Shapro: No, your Honor, the second asks for \$2,500.00 as a preference. If you do not give



him preference on the first count to recover the \$5,000.00, its consistent— [633] I mean that phase of it is consistent with shall we say the law and the facts.

Now we have then, your Honor, the situation that the normal when and if—and I say with due deference to your Honor and I say with due deference to counsel with whom I had the pleasure of commencing the practice of law some twenty-eight years ago—that in my experience in bankruptcy Courts such as it may be I have never found where a trustee undertook to set aside *a* defeat a claim for an obligation at least until it was presented or became a threat to the estate.

In this case, this claim was never filed.

I also call your Honor's attention to the fact that Mrs. Lannin didn't file a claim based upon any liabilities that she might incur by reason of her obligation to us under the guarantee.

She filed a claim for sixteen-odd thousand dollars, which was admitted direct indebtedness from the bankrupt to her.

I called your Honor's attention once before to the fact that the cross-complaint in this case, the answer in cross-complaint was filed on the same date that the complaint was filed.

I also called your Honor's attention—and I do it with due deference to all parties concerned—to an examination of the paper of the typing and of the language in the cross [634] complaint and in the complaint in this case.

And I say to your Honor without fear of con-

tradiction that they were typed by the same typewriter and were dictated by the same man.

Now the interesting part of that observation, at least from our standpoint, your Honor, is this: To sue for a preference—in the first place to sue for the \$2,500.00 loan, you know, that was based on the note—after it was within the four months period—would avail the trustee, if successful of \$2,500.00 for the estate.

But if the note weren't set aside, it would put Twin City Lumber Company in a position to get that \$2,500.00 back from Mrs. Lannin because they guaranteed the whole amount.

The third count: Mrs. Lannin isn't involved in that, we are. As I said, in my memorandum in one paragraph, that is purely a question of fact and if your Honor believes we had reasonable cause to believe that Elliff was insolvent in March of 1954, when he obtained that money, the trustee is entitled to recover.

The only evidence which counters their inference they want you to draw, or reasonable cause to believe, is positive evidence. It's in the record here; namely, that in March of 1954 at the time we got the money, he was doing business on open account with very large plywood and lumber companies. And their invoices are here and his testimony was with Harbor [635] Plywood was \$7,000.00 on open account.

Your Honor will recall he admitted that on cross examination.

I also say to your Honor that if we were guilty

of the fraud that with which we are charged, if we had the knowledge, the intricate and replete and complete knowledge of the insolvent condition of Mr. Elliff in October of 1953, and if we participated with him, which is a necessary corollary of a recovery, there must be both fraudulent intent by the bankrupt and fraudulent intent by the transferee or the obligee, as in this case. They must be joint. One without another isn't enough unless the type of fraud by the transferee is sufficient that it would be imputed to the bankrupt, which even in this case I don't think is charged.

Under those conditions we gave him \$5,400.00 worth of new open account credit in November of 1954.

Now if your Honor from having seen Mr. Hunter, who is the boss of this concern, was and is, if your Honor believes that he looks like the kind of a man that if he knew all these things would give \$5,500.00 or \$5,400.00 on an open account credit after all that, then of course the evidence, the evidence to which I have addressed your Honor won't be persuasive.

But I don't think that your Honor can reach the conclusion, reasonably, that such was the fact. [636]

However, let us revert if I may for a moment, to the main thing.

Counsel started his argument this morning by saying that the salient fact, or one of the salient facts in this case was the trust agreement.

Now there is dispute in the evidence about our knowledge, our participation, our dictating the terms and so forth. But forget all that; forget

the conflict, resolve it for the sake of argument in favor of the plaintiff. There is nothing in the trust agreement, even if it was dictated by us and if we did everything concerning it that the plaintiff says we did, there is nothing fraudulent. There is nothing reprehensible. There is nothing voidable in connection with it.

All that was actually done—and I think the document speaks for it—I think all of the evidence really speaks for it, it was done in good faith by Mr. Elliff to protect his mother-in-law to the extent that he could in a guarantee that maybe he knew or maybe he didn't know might someday cause her grief, I mean, financial grief.

We have this situation stated by counsel that Mrs. Lannin gained nothing monetarily or otherwise by reason of this endorsement.

I will admit she gained nothing monetarily, but she gained something otherwise and she told your Honor what that something was. She gained peace of mind with her children. [637]

She testified—your Honor will recall it, I am sure—she knew his place, it looked like it would work itself out. She didn't want to refuse it and have it said afterwards that she might have saved the business, I mean by giving the guarantee if that she had refused it.

What more evidence your Honor, would the Court, want to show that the only reason for this guarantee was the family blood relationship between the mother and the daughter whose husband was the one finally involved, and that she knew

what she was doing, she knew there was some doubt about the wisdom of the financial standpoint.

That is confirmed most conclusively, we submit, by the fact that she said that if the business wasn't saved, she didn't want to be blamed for the fact that she might have saved it by giving the guarantee.

At no time have we contended, your Honor, that Mrs. Lannin participated in any fraud nor was she in bad faith in any respect. At no place have we said so and at no place have we urged.

She was victimized, but I don't think as contrary to counsel's views, I don't think Mrs. Lannin was victimized by her son-in-law by the act of fraud, the fraudulent misrepresentations which are contained in the cross complaint.

Again I respectfully ask your Honor to review, to re-read the cross complaint, the allegations in that cross complaint. [638] They were never proven in this case.

The allegations of that cross complaint were that he, Elliff, misrepresented to her his solvency and so forth and so on.

Your Honor will recall the testimony of Mr. Rubidoux. I mean I reserve motions to strike and so forth. I am not urging those motions because I am perfectly satisfied that the testimony is consistent with everything else in the case.

He said that he was told by Mr. Pasquinelli that there was in effect \$50,000.00 in assets and roughly \$40,000.00 in debts.

The testimony of Mr. Elliff is substantially the



same. The testimony of Mr. Baum is substantially the same. The testimony of Mr. Ramsay is substantially the same.

Much is made this morning about the fact that the tapes, the records, the notations, the records were destroyed, asking your Honor to presumably infer that there was something reprehensible in those, something damaging to the case of Twin City, and they were destroyed.

Mr. Ramsay's own testimony is confirmatory of the testimony given by the plaintiff as to the assets and liabilities on account, as reflected by the books and the tapes.

So I mean the fact that they were destroyed was just an incident to, shall we say, a certain amount of lenientness in a business office. That's all. [639]

Now counsel also made a point that the guarantor, or her attorney, were not present at the October 8th conferences. He urges that as an indication of the secretiveness of the thing. Such is not the fact, your Honor, because Mr. Rubidoux testified that he went over to Mr. Pasquinelli's office after the agreement was drawn up and he read it and he passed upon it and advised his client, Mrs. Lannin, to sign it.

Now if there was going to be a secret about it, the answer would have been shoved under her nose.

Now certainly anybody as competent as Mr. Rubidoux, is he going to pass upon it with respect to his client's rights? The secretiveness of this so-called trust agreement is vastly over-emphasized. It has

no bearing upon damage so far as the estate of the bankrupt is concerned.

When the October 8th transaction was completed, if your Honor please, the only thing that the Twin City Lumber Company had that they didn't have before is Mrs. Lannin's guarantee and that was of no damage to the estate, and in turn that he had given up control of the warehouse.

They didn't have a dime in an obligation that was coming to them and they didn't have the security tangibly, but they had a guarantee of a lady whose financial statement, as your Honor knows, which is in evidence, shows she is worth a quarter of a million dollars. [640]

There wouldn't be too much worry and it's much more logical and good sound business judgment to assume that the truth of Mr. Ramsay's testimony and the truth of Mr. Hunter's testimony, particularly the latter's, with respect to the financial statement that he wasn't interested in the trust agreement, he wasn't interested in the collateral as long as he had Mrs. Lannin's guarantee—and frankly your Honor I don't blame him.

On the subject of the second count, which I presume counsel has had an opportunity to read now, I didn't mail it to him yesterday because I knew they wouldn't get them so I delivered them first thing this morning.

The point we make there is that under the definition of secured creditor in Section 1 of the Bankruptcy Act, subdivision 28, Mrs. Lannin at the time of the \$2,500.00 payment, and on counsel's own

argument this morning, he informs me in that regard was secure credit because they as the guarantor of our obligation had collateral of the bankrupt to secure her guarantee.

That is exactly what the second sentence in this subdivision 28 of Section 1 says.

Now if she was a secured creditor at the time she received the \$2,500.00 within the four months, she cannot be preferred. I have cited to your Honor very briefly some sections in Collyer, which if you're interested and concerned, [641] can be expanded. I mean by that all you have to do is read about three or four pages beyond and three or four pages before the specific section of Collyer that I cited.

Your Honor will have a complete exposition of what I am sure is the law.

That a recoverable preference cannot exist where the transferee at the time of the receipt of the money, even though within the four months is secured, unless the payment would be transferred to him in excess of the fair market value of the security at the time.

Now when the \$2,500.00 was paid to Mrs. Lannin—I mean to Twin City for the bankrupt within the four months prior to bankruptcy, which is the subject of the second count, as far as the evidence shows the warehouse had substantial lumber in it.

The figure isn't in there but to offer—when a payment is made to a secured creditor and the trustee is to recover, that is a preference. It is the burden of the trustee to show that the asset value

of the security was less than the amount of the payment or the preferential transfer.

In other words, if the trustee had shown that at the time of the \$2,500.00 given to Twin City, the value of the merchandise in the warehouse on receipts held by Mrs. Lannin was less than \$2,500.00 to the extent of the difference between the actual value and the payment, it would be a recoverable [642] preference, all other things being equal.

But there is no evidence here that at the time the \$2,500.00 within the four months was paid on this note to Twin City Lumber Company; that Mrs. Lannin who was then secured by warehouse receipts was not adequately secured to the extent of the \$2,500.00 payments.

If as we say, as we urge, Mrs. Lannin was a secured creditor as specifically defined by subdivision 28 of Section 1 that it is not a recoverable preference because—the article that I do refer to calls it the diminution, the diminution of the estate.

It's the old system of double entry bookkeeping, the theory of a recoverable preference. That if there is security on this side of the ledger, a payment merely increases the security and releases the case.

The asset value of all assets of the debtor at the time remains the same because if she has a lien for \$2,500.00 on assets and the \$2,500.00 obligation is paid, the asset value of the security is eliminated.

The net result is that the estate gets the benefit of the discharge of the lien without a diminution

of the estate as a result of the preferential payment. It is not recoverable.

The third count, I have already referred to that, is a question of fact.

The fourth count, the question of damages penal and [643] otherwise, I of course agree that there is no statute or authority for this. This is purely a statutory action. This Court has no jurisdiction of this action except under Section 60, under Section 67, or under Section 70, 70 E, not 70 C.

70 C could only apply to the trustee, if at all, and that would give the Court no jurisdiction whatever as far as Mrs. Lannin's cross complaint is concerned.

I mean I am referring now to the damage phase of it because assuming for the sake of argument that under 70 C a claim for damages is possible for which there is no authority whatever—and I don't think from reading it your Honor will reach the conclusion that counsel will have you reach—but assuming it does, 70 C is only for the benefit of the estate.

It is not available for the benefit of Mrs. Lannin. No place have we run into a situation where damages for fraud allegedly committed in the form of the receipt of a voidable transfer, of a voidable obligation under the Uniform Fraudulent Conveyance Act or under Section 67, its counterpart, as we have indicated.

As I pointed out to your Honor the statute limits its challenge to the fraudulent transfer to say that the transfer is fraudulent and void. It doesn't



say anything about recovery after damages or recovery of anything else except [644] in effect to set aside a transfer.

Now counsel, referring just very briefly now to certain items, counsel said that Mr. Elliff testified that the \$1,200.00 check, which was one of the items of the preference in the fourth count—the one in the third count that was added by the amendment, that is balanced and is protested.

He didn't testify that it was protested. There is no evidence that it was protested. Mrs. Swanson's testimony was that it never was returned. That's just an item.

If as we said before—and I am using counsel's words—if we received in October additional security for the note—I am using his words of this morning—"That is not fraudulent; that is not voidable because it took place more than four months before bankruptcy."

Again assuming that we knew about all his insolvency and that he was insolvent.

The Court: May I ask this question while you are on the subject of the third count?

Mr. Shapro: Yes, your Honor.

The Court: By reason of the amendment that was filed, assuming for the moment that everything the plaintiff contends the Court finds in this third count, what would be the amount——

Mr. C. Huntington Jacobs: Thirty-six hundred dollars and some odd. [645]

The Court: \$3616.00.

Mr. Shapro: \$4816.52.

The Court: That is the figure I have here.

But you spoke of the \$1200.00. Is there some difference between the \$1200.00 item and the items of three one seven oh and three four six?

Mr. C. Huntington Jacobs: No, your Honor. That was one—counsel explained at the beginning of the case that he wasn't sure it was preferences when the suit was filed. He developed some more information and then decided to add it.

The only reason he even mentions it in this argument now——

The Court: It is in exactly the same category as the other three? The only reason I mention it is because counsel made a point that the \$1200.00 check bounced as late as April of 1954. That check never bounced. And counsel said there was evidence that it had been protested. The protests are in evidence. They are Exhibit 16. They show that we have talked about it, you know that part, \$28,000.00 note. They show three earlier checks. How did the \$1200.00 then become an item that was paid?

Mr. Shapro: Oh yes, that was paid. We received the money. There was no controversy on that score at all.

In conclusion your Honor, I want to say to the Court in all candor and sincerity that the plaintiff as far as the [646] estate of the bankrupt is concerned—and that is all that the plaintiff is interested in, the plaintiff is a trustee in bankruptcy—incidentally, off the record, I might state to your Honor that Mr. Williams the trustee is a gentleman of the highest repute for whom I have the privilege

of acting in many, many cases many times, the last case I tried before you, Williams was the plaintiff, remember, against Minardee.

The only thing that the trustee is interested in and can legally be interested in something which adversely affects it. It is a statutory right. It is limited by the statutes.

If you go back to the common law, you don't find any difference. The cases I have been citing go back to 1817 in which the same yardstick is still employed where there was either current or past consideration for both there can be no fraudulent conveyance except actually as distinguished from inferred fraud, intent to hinder or delay or defraud creditors.

We submit if your Honor please, ordinary prudent common business judgment, good law, sound common sense indicates that there was nothing done by Twin City Lumber Company in connection with this promissory note that was remotely reprehensible, let alone sufficient to charge them with and label them as the recipients of and participants in an active deliberate fraud upon the estate.

The estate of the bankrupt suffered no damage whatever. [647] The indebtedness remained the same. The security was available to the bankrupt and the creditors of the bankrupt as I have pointed out to your Honor for the trust agreement was made for the benefit as well as for ours.

Mr. C. Huntington Jacobs: Do you wish me to reply?

The Court: I will give you such time as you desire.

Mr. C. Huntington Jacobs: That is very kind of your Honor. I do want an opportunity to do that. Do you care to have me reply now?

The Court: Yes.

Mr. C. Huntington Jacobs: I will try to make this just as brief as I can. I want to leave the fourth count behind us for your Honor's consideration with just this remark.

The Court has jurisdiction unquestionably of the subject matter of the first three counts. The fourth count is related to the first three.

This is a court of equity and the court of equity customarily disposes, once it has jurisdiction of the subject matter, customarily disposes of the entire controversy.

I see no difficulty in the Court disposing of the controversy insofar as it takes the form of the fourth count since it has the unquestioned jurisdiction of the subject matter in the form which it takes in the first three counts.

Now in respect of this distinction which counsel makes between the second count and the third, it seems to me is [648] begging the question.

In the first place if the note was fraudulent as contended by the trustee, if the note was fraudulent and void, of course that there argument falls to the ground and becomes unimportant anyway because the amounts paid on the note are recoverable under the first count.

It is in evidence that in the proceedings in which

Mrs. Lannin sought to assert her claim the claim was unfounded. Her lien was denied. Her adverse claim was denied. The net result is that she didn't actually have any lien and hasn't got one now.

She did intend at the beginning of this case, and is still contending, formally, that she had a lien. But actually the decision was that she had none. That was the decision of the Referee and that is in evidence and the reasons are stated in his order.

Now when he says that she was a secured creditor, he ought to have added contingent creditor. She was a secured contingent creditor if that note was valid. If it wasn't then her guarantee was not valid either because her guarantee was collateral to the obligation of the note.

And consequently when \$2500.00 was paid on that note, there was as clear as possible a preference, not only to Mrs. Lannin but also to the payee of the note; that is to say, its successor, Twin City Lumber Company, or so it seems to me. [649]

I think however that that question is of secondary significance because I honestly feel that upon examining the record in this case—and your Honor's notes which I know are very carefully kept—your Honor will very probably agree with the contentions of the trustee that this transaction was fraudulent from every point of view.

Now Mr. Collyer disagrees. I think I have cited his comment in the memorandum in discussing what fraud is necessary to entitle the trustee to recover under Section 67 D to a case of actual fraud.

And we are not limiting ourselves to actual fraud



either. I will agree right now. Mr. Collyer takes the position, as I think your Honor will find upon reading his comment, that if an actually fraudulent intent existed on the part of the bankrupt, on the part of the transferer that is, or obliger, it is utterly immaterial whether it also existed on the part of the transferee or obligee.

That point I think is covered in our memorandum. I haven't in the memorandum that I submitted drawn as extensively into the cases that are cited by Mr. Collyer as counsel has and in his reply.

But if your Honor reads Mr. Collyer's comment upon these matters I think Mr. Collyer is a matter of convenience. We all know what the situation is there.

I believe that you will find that the first count of this [650] complaint is solidly supported by authority in view of the evidence in this case. I was very much surprised to hear this appraisal that was given your Honor of this trust agreement.

Counsel says he can find nothing fraudulent about it. He says he can find nothing wrong about it. He finds it quite all right that the agreement provided in effect for the payment of one obligation or purported obligation at the expense of new creditors who must necessarily be brought into the picture and left unpaid because of the appropriation of twenty per cent of the proceeds of this losing business to be payment of that purported obligation.

He also surprised me when he mentioned the proposition that Section 67 D was intended to cover only fictitious obligations. I don't know what au-

thority he could possibly deduce from such a proposition. The statute speaks for itself.

It very sensibly brackets as one and the same category transfers of material things and the incurrance of obligations by a bankrupt, I mean by a debtor.

And so does the Uniform Fraudulent Conveyance Act exactly the same way.

He surprised me again when he referred at first to Mr. Elliff's intentions that the note should be received in payment as a figment of imagination of myself. [651]

But how can that be said when your Honor has before your Honor an exhibit which was put in this case by the defendant, by the defense itself, showing that that was his intent unmistakably because in that letter he conditions the theory or try to have the note upon the return of these unpaid checks aggregating over \$9000.00 and comprising more than one third of the total antecedent indebtedness.

What else can he intend? How did he suppose he was to be entitled to the return of those checks if this note was to be accepted as security for the payment of those checks or the amount that they represented.

It is perfectly apparent what he intended and if my memory doesn't fail me completely, and if my notes are not wrong, he testified what he intended by the discussion of that note and Mr. Baum testified how the total of the note was arrived at and why the excess claimed by Twin City was paid in cash over and above this amount of \$28,000.00, and

that payment and this note are obviously intended to wipe the slate clean except for the note itself.

That was not the intent of Twin City or it was their intent at the time that the note was executed, it certainly was not at the time the note reached them.

They never did receive this payment and I am glad to hear that admission.

But now we are told that the checks, the reason for the [652] non return of the checks was merely that they were mislaid. Isn't that entirely inconsistent with counsel's position that the note was never intended to operate this payment?

It seems to me that there is a clear conclusion there between two opposite views by one and the same party.

What was this extension of time to which counsel refers? There is nothing in writing about it, nothing in evidence about it. It is an inference drawn from the fact that they took no action actually after they had gotten this guaranteed note with the present security of everything that the man had substantially or very nearly everything and it as an insurance of future security of receiving his future security of everything substantially that he might acquire in a business way thereafter.

Is there an extension of time implied there, that he could have actually filed an action against him so far as anything in this evidence shows?

Insofar as I can see, they could have filed an action against him the day after that October transaction was made if they had wanted to on these old

obligations which they had kept alive or they could have waited if they wished until the note came due and then filed an action against him.

Instead of that you will recall my asking Mr. Hunter "Do you expect payment entirely and exclusively from Mrs. Lannin?" [653]

And he said, "Why, no, we expected to get paid by Elliff as long as he stayed in business."

That was the substance of what he said. I think the record will bear me out.

Of course they didn't want to pursue Mrs. Lannin—to sue Mrs. Lannin unless they had to. It was much pleasanter and much more feasible to get the money from the business as long as Mr. Elliff could continue in business by incurring obligations which he could not pay.

There are many other matters that I have noted down, but it would take too long to cover them.

I do want to mention one thing to which I have already alluded in my reply.

Our complaint shows that we rely in this first count not merely upon actual fraud but upon constructive fraud designed by the Bankruptcy Act and also by the Uniform Fraudulent Conveyance Act.

Our memorandum deals with that matter and adverts to the witnesses whose testimony appeared to support the present.

It is our contention that there is present in this case all of the elements required by each of those three definitions. They are alternatives.

If any one of them be found there was construc-

tive fraud, and of course if there was constructive fraud it is immaterial whether there was actual fraud or not, but we have laid stress [654] upon the actual fraud in this case because it seems to us that there seldom has been a case that affords more evidence of an intent to hinder or delay or to defraud and they all come under the heading of fraud under the Bankruptcy Act and under the Uniform Fraudulent Conveyance Act.

It isn't necessary that the bankrupt should have intended never to pay the obligation at all. It is quite sufficient that he intended to hinder or delay the creditor in realizing upon this obligation.

If this was his intent, it is just as fraudulent as though he never intended to pay that creditor at all.

But I call your Honor's attention to the testimony of the bankrupt which is absolutely unrefuted to this effect, that he incurred after that October transaction for the purpose of merchandise for his stock in trade from other suppliers than Twin City Company or Twin City Lumber Company, he incurred indebtedness aggregating approximately \$40,000.00 of which he paid only approximately \$8000.00, one fifth.

The other four fifths, what happened to that? It either vanished in the continued operation of that business, the expense of it, of which eighty per cent of its proceeds were, the entire proceeds might have been allocated, or else it was paid to Twin City Lumber Company on account of this note while the creditors who had supplied the merchandise from which this money was derived by virtue of this ut-



terly [655] innocent document, this trust agreement, remained unpaid and remained unpaid today. Thank you.

Mr. Shapro: May I have just one word, your Honor?

The Court: Yes.

Mr. Shapro: We do not contend that this note was given to us or received by us as security for anything. It was a written evidence of the indebtedness and the old accounts were closed and the old account was opened on that basis.

The word security as counsel used it imports some lien upon the property of the bankrupt. That we didn't have for—such is not our contention as and as far as the innocent document which he refers to, he said the bankrupt incurred \$40,000.00 worth of obligations, if we got our twenty per cent of it we would have gotten \$8000.00 on the note.

In other words, if your Honor please, we were supposed to anticipate in October despite the fact that in November we gave him \$5400.00 worth of new merchandise, that he was going to buy \$40,000.00 new merchandise on open account with no credit at all of being insolvent and only pay twelve of it—in other words, we were supposed to be sued, I don't think it's reasonable.

The Court: Well, the matter may be submitted. I want to read these memorandums again.

[Endorsed]: Filed July 23, 1956.

[Endorsed]: No. 15201. United States Court of Appeals for the Ninth Circuit. Ralph E. Williams, as Trustee in Bankruptcy of the Estate of George F. Elliff, an individual doing business as Pine Supply Co., bankrupt, and Pearl K. Lannin, Appellants, vs. Twin City Company, Twin City Lumber Co., John W. Hunter, Franklin Supply Corporation, Southwest Management Corp., H. A. Collins and William R. Ramsay, Appellees. Transcript of Record. Appeal from the United States District Court for the Northern District of California, Southern Division.

Filed: July 10, 1956.

Docketed: July 23, 1956.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the  
Ninth Circuit.

In the United States Circuit Court of Appeals,  
in and for the Ninth Circuit

No. 15201

RALPH E. WILLIAMS, as Trustee in Bankruptcy of the Estate of GEORGE F. ELLIFF, an individual, doing business as "PINE SUPPLY CO.," Bankrupt, and PEARL K. LAN-  
NIN, Appellants,

vs.

TWIN CITY COMPANY, TWIN CITY LUMBER CO.; JOHN W. HUNTER; FRANKLIN SUPPLY CORP.; a corporation; SOUTHWEST MANAGEMENT CORP., a corporation; H. A. COLLINS and WILLIAM W. RAMSAY, Appellees.

### SPECIFICATION OF POINTS

Appellants specify as follows the points upon which they rely upon this appeal; to-wit:

1. In view of the pleadings and the evidence, the District Court should have found the October transaction mentioned in the First and Fourth Counts of the Complaint and Cross-Complaint constructively fraudulent under subsection 2, of subdivision d, of section 67, of the Bankruptcy Act and under each of the first three clauses of that subsection; namely, clauses (a), (b), and (c).

2. In view of the pleadings and the evidence, the District Court should have found the said October

transaction constructively fraudulent under sections 3439.04, 3439.05, and 3439.06 of the Uniform Fraudulent Conveyance Act of California (namely Cal. Civil Code, secs. 3439.04-3439.06).

3. In view of the pleadings and the evidence, the district Court should have found the October transaction, mentioned in the Complaint and Cross-Complaint, actually fraudulent under clause (d) of subsection 2, of subdivision d, of section 67 of the Bankruptcy Act.

4. In view of the pleadings and the evidence, the District Court should have found the said October transaction actually fraudulent under section 3439.07 of the said Uniform Fraudulent Conveyance Act of California.

5. The District Court should therefore have found the promissory note involved in said transaction fraudulent and void as against the creditors of the bankrupt and his trustee in bankruptcy under subsection (6) of subdivision d, of section 67, and under subsections (1) and (2) of subdivision e of section 70, of the Bankruptcy Act.

6. The appellant Trustee further specifies that the District Court should therefore have found fraudulent and void as against the Trustee, each and all of the transfers made by the bankrupt from his estate as payments upon said note, and should have concluded and held that all of said payments made prior to (besides those made during) the period of four months next preceding bankruptcy, were recoverable as fraudulent transfers under subsection (6) of subdivision d of section 67, and under

subsection 2 of subdivision e of section 70, of the Bankruptcy Act; and further specifies that he should have been awarded judgment accordingly upon his First Count.

7. The appellant Trustee further specifies that the District Court should have found that the estate of said bankrupt was impaired as a proximate result of such fraud on the part of the appellees, in the manner and to the extent alleged in the Fourth Count of the Complaint, and should have concluded and held that on behalf of the creditors the trustee was entitled to recover from the appellees and each of them the amount of such impairment; and further specifies that he should have been awarded judgment accordingly upon his Fourth Count.

8. The appellant cross-complainant, Pearl K. Lannin, further specifies that the said note being void as fraudulent, was and is wholly unenforceable even as against the maker, and that the District Court should therefore have found, concluded and declared her accommodation guarantee of said note to be equally void and unenforceable as against her in accordance with the prayer of her cross-complaint.

9. The appellant cross-complainant, Pearl K. Lannin, further specifies that the District Court should have found she had been actually damaged in the manner and to the extent alleged in her cross-complaint as a proximate result of such fraud on the part of the appellees, and should have concluded and held that she was entitled to recover the amount of such actual damage plus such exemplary



damage as the Court might deem appropriate within the prayer of her Cross-Complaint, and that she should have been awarded such actual and exemplary damages.

Dated: September 17, 1956.

Respectfully submitted,

/s/ C. HUNTINGTON JACOBS,  
Attorney for Appellant Trustee,  
Ralph E. Williams

/s/ ROBERT N. JACOBS,  
Attorney for Appellant Cross-  
Complainant, Pearl K. Lan-  
nin

Affidavit of Service by Mail Attached.

[Endorsed]: Filed Sept. 18, 1956. Paul P.  
O'Brien, Clerk.

